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इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह पृथक संकलन के रूप में रखा जा सके
Separate Paging is given to this Part in order that it may be filed as a separate compilation

भाग II—खण्ड 3—उप-खण्ड (ii)
PART II—Section 3—Sub-section (ii)

भारत सरकार के मंत्रालयों (रक्षा मंत्रालय को छोड़कर) द्वारा जारी किए गए सांविधिक आदेश और अधिसूचनाएं
Statutory Orders and Notifications Issued by the Ministries of the Government of India
(Other than the Ministry of Defence)

वित्त मंत्रालय

(राजस्व विभाग)

(केन्द्रीय प्रत्यक्ष कर बोर्ड)

नई दिल्ली, 7 फरवरी, 2025

का.आ. 166.—केन्द्र सरकार, राजभाषा (संघ के शासकीय प्रयोजनों के लिए प्रयोग) नियम, 1976 के नियम 10 के उपनियम (4) के अनुसरण में राजस्व विभाग के अधीन, निम्नलिखित कार्यालयों, जिनके 80 प्रतिशत से अधिक कर्मचारियों ने हिन्दी का कार्य साधक ज्ञान प्राप्त कर लिया है, को अधिसूचित करती है:

प्रधान मुख्य आयकर आयुक्त, बेंगलूर क्षेत्र

- 1 कार्यालय प्रधान मुख्य आयकर आयुक्त, बेंगलूर
- 2 कार्यालय आयकर आयुक्त (प्रशा. एवं करदाता सेवाएं), बेंगलूर

- 3 कार्यालय आयकर आयुक्त (ऑडिट), बेंगलूर
- 4 कार्यालय आयकर आयुक्त (न्यायिक), बेंगलूर
- 5 कार्यालय आयकर अपीलीय अधिकरण (आईटीएटी), बेंगलूर
- 6 कार्यालय मु.आ.आ. (आरईएफएसी), पट्टो
- 7 कार्यालय प्रधान आयकर आयुक्त (आरईएसी) (नि. यू.)-1, पट्टो
- 8 कार्यालय आयकर अपर/संयुक्त आयुक्त (आरईएसी) (नि. यू.) -1(1), पट्टो
- 9 कार्यालय आयकर अपर/संयुक्त आयुक्त (आरईएसी) (नि. यू.) -1(2), पट्टो
- 10 कार्यालय आयकर अपर/संयुक्त आयुक्त (आरईएसी) (नि. यू.) -1(3), पट्टो
- 11 कार्यालय आयकर अपर/संयुक्त आयुक्त (आरईएसी) (नि. यू.) -1(4), पट्टो
- 12 कार्यालय प्रधान आयकर आयुक्त (आरएफएसी) (बी. यू.) -1, पट्टो
- 13 कार्यालय आयकर अपर आयुक्त, रेंज -1, पट्टो
- 14 कार्यालय प्रधान आयकर आयुक्त (आरईएफएसी) (समीक्षा यूनिट), पट्टो
- 15 कार्यालय आयकर अपर आयुक्त, आरईएसी (समीक्षा यूनिट) - 1, पट्टो
- 16 कार्यालय आयकर अपर आयुक्त, आरईएसी (समीक्षा यूनिट) - 1 (2), पट्टो
- 17 कार्यालय आयकर अपर आयुक्त, आरईएसी (समीक्षा यूनिट) - 1 (3), पट्टो
- 18 कार्यालय राष्ट्रीय प्रत्यक्ष कर अकादमी, क्षेत्रीय परिसर, बेंगलूर
- 19 कार्यालय आयकर महानिदेशक (अन्वेषण), बेंगलूर
- 20 कार्यालय प्रधान आयकर आयुक्त (केंद्रीय)(मु.), बेंगलूर
- 21 कार्यालय आयकर अपर आयुक्त,(केंद्रीय) रेंज-1, बेंगलूर
- 22 कार्यालय आयकर अपर आयुक्त,(केंद्रीय) रेंज-2, बेंगलूर
- 23 कार्यालय आयकर अपर आयुक्त,(केंद्रीय) रेंज-1, पणजी
- 24 कार्यालय आयकर उप आयुक्त,(केंद्रीय) रेंज-1, बेलगावी
- 25 कार्यालय आयकर सहायक आयुक्त,(केंद्रीय) सर्कल, हुब्बल्ली
- 26 कार्यालय आयकर उप आयुक्त ,(केंद्रीय) सर्कल, बल्लारी
- 27 कार्यालय आयकर संयुक्त आयुक्त,(केंद्रीय), मंगलूर
- 28 कार्यालय आयकर संयुक्त आयुक्त,(केंद्रीय), मैसूर
- 29 कार्यालय आयकर संयुक्त आयुक्त,(केंद्रीय), हासन
- 30 कार्यालय प्रधान आयकर निदेशक, पणजी-गोवा
- 31 कार्यालय आयकर आयुक्त (अपील)-2,पणजी
- 32 कार्यालय आयकर आयुक्त(अपील)-11, बेंगलूर
- 33 कार्यालय प्रधान आयकर निदेशक(अन्वेषण) (मुख्या.),बेंगलूर
- 34 कार्यालय आयकर अपर निदेशक(अन्वे.),यू-1, बेंगलूर
- 35 कार्यालय आयकर अपर निदेशक(अन्वे.),यू-2, बेंगलूर
- 36 कार्यालय आयकर अपर निदेशक(अन्वे.),यू-3,बेंगलूर
- 37 कार्यालय आयकर अपर निदेशक(अन्वे.),बी.पी.यू, बेंगलूर

- 38 कार्यालय आयकर अपर निदेशक(अन्वे.), एफ.ए.आइ.यू, बेंगलूर
- 39 कार्यालय आयकर अपर निदेशक(अन्वे.), मंगलूर
- 40 कार्यालय आयकर उप निदेशक(अन्वे.), मैसूर
- 41 कार्यालय आयकर सहायक निदेशक(अन्वे.), हासन
- 42 कार्यालय आयकर निदेशक आयुक्त,(सी.पी.सी.), बेंगलूर

मुख्य आयकर आयुक्त, बेंगलूर - 2 क्षेत्र

- 1 कार्यालय मुख्य आयकर आयुक्त, बेंगलूर - 2
- 2 कार्यालय प्रधान आयकर आयुक्त (नि.यू.)-1, बेंगलूर
- 3 कार्यालय आयकर अपर आयुक्त (नि.यू.)-1(1), बेंगलूर
- 4 कार्यालय आयकर अपर आयुक्त (नि.यू.)-1(2), बेंगलूर
- 5 कार्यालय आयकर अपर आयुक्त (नि.यू.)-1(3), बेंगलूर
- 6 कार्यालय आयकर अपर आयुक्त (नि.यू.)-1(4), बेंगलूर
- 7 कार्यालय प्रधान आयकर आयुक्त (नि.यू.)-2, बेंगलूर
- 8 कार्यालय प्रधान आयकर आयुक्त (नि.यू.)-3, बेंगलूर
- 9 कार्यालय आयकर अपर आयुक्त (नि.यू.)-3(1), बेंगलूर
- 10 कार्यालय आयकर अपर आयुक्त (नि.यू.)-3(2), बेंगलूर
- 11 कार्यालय आयकर अपर आयुक्त (नि.यू.)-3(3), बेंगलूर
- 12 कार्यालय आयकर अपर आयुक्त (नि.यू.)-3(4), बेंगलूर
- 13 कार्यालय प्रधान आयकर आयुक्त, (स.ई.)-1, बेंगलूर
- 14 कार्यालय प्रधान आयकर आयुक्त (वी.यू.)-1, बेंगलूर
- 15 कार्यालय प्रधान आयकर आयुक्त (नि.यू.)-1, मैसूर
- 16 कार्यालय आयकर संयुक्त आयुक्त (नि.यू.)-1(1), मैसूर
- 17 कार्यालय आयकर संयुक्त आयुक्त (नि.यू.)-1(2), मैसूर
- 18 कार्यालय आयकर अपर आयुक्त (नि.यू.)-1(3), मैसूर
- 19 कार्यालय आयकर अपर आयुक्त (नि.यू.)-1(4), मैसूर
- 20 कार्यालय आयकर आयुक्त (अपील) यूनिट -1, बेंगलूर
- 21 कार्यालय आयकर आयुक्त (अपील) यूनिट -2, बेंगलूर
- 22 कार्यालय आयकर आयुक्त (अपील) यूनिट -3, बेंगलूर
- 23 कार्यालय आयकर आयुक्त (अपील) यूनिट -4, बेंगलूर
- 24 कार्यालय आयकर आयुक्त (अपील) यूनिट -5, बेंगलूर
- 25 कार्यालय आयकर आयुक्त (अपील) यूनिट -6, बेंगलूर
- 26 कार्यालय आयकर आयुक्त (अपील) यूनिट -7, बेंगलूर
- 27 कार्यालय आयकर आयुक्त (अपील) यूनिट -8, बेंगलूर
- 28 कार्यालय आयकर आयुक्त (अपील) यूनिट -9, बेंगलूर
- 29 कार्यालय आयकर आयुक्त (अपील) यूनिट -10, बेंगलूर
- 30 कार्यालय आयकर आयुक्त (अपील) यूनिट -11, बेंगलूर

मुख्य आयकर आयुक्त, बेंगलूर -1 क्षेत्र

- 1 कार्यालय मुख्य आयकर आयुक्त -1 (मुख्या.), बेंगलूर
- 2 कार्यालय प्रधान आयकर आयुक्त -1, बेंगलूर
- 3 कार्यालय आयकर अपर/संयुक्त आयुक्त , रेंज - 1(1), बेंगलूर
- 4 कार्यालय आयकर अपर/संयुक्त आयुक्त, रेंज - 6(1),
- 5 कार्यालय प्रधान आयकर आयुक्त - 2, बेंगलूर (मुख्यालय)
- 6 कार्यालय आयकर अपर/संयुक्त आयुक्त, रेंज-2(1), बेंगलूर
- 7 कार्यालय आयकर अधिकारी, वार्ड-1, तुमकुरु
- 8 कार्यालय आयकर अधिकारी, तिपतूर
- 9 कार्यालय आयकर अपर/संयुक्त आयुक्त, रेंज-2(2), बेंगलूर
- 10 कार्यालय आयकर अपर/संयुक्त आयुक्त, रेंज-4(1), बेंगलूर
- 11 कार्यालय आयकर अधिकारी, वार्ड-1, कोलार
- 12 कार्यालय आयकर अपर/संयुक्त आयुक्त, रेंज-4(3), बेंगलूर
- 13 कार्यालय आयकर अपर/संयुक्त आयुक्त, रेंज-7(1), बेंगलूर
- 14 कार्यालय प्रधान आयकर आयुक्त- 3, (मु.) बेंगलूर
- 15 कार्यालय आयकर अपर/संयुक्त आयुक्त, रेंज-3(1), बेंगलूर
- 16 कार्यालय आयकर अधिकारी, वार्ड - 1, रामनगरा
- 17 कार्यालय आयकर अपर/संयुक्त आयुक्त, रेंज-3(3), बेंगलूर
- 18 कार्यालय आयकर अपर/संयुक्त आयुक्त, रेंज-1, मैसूर
- 19 कार्यालय आयकर अधिकारी, वार्ड-1, चमराजनगर
- 20 कार्यालय आयकर अधिकारी, वार्ड-1, मांड्या
- 21 कार्यालय आयकर अधिकारी, वार्ड-1, हासन
- 22 कार्यालय आयकर अधिकारी, वार्ड-1, चिक्का मंगलूर
- 23 कार्यालय आयकर अधिकारी, वार्ड-1, मदिकेरी
- 24 कार्यालय प्रधान आयकर आयुक्त, हुब्बल्ली
- 25 कार्यालय प्रधान आयकर आयुक्त, पणजी
- 26 कार्यालय आयकर संयुक्त आयुक्त, रेंज-1, पणजी
- 27 कार्यालय आयकर अपर आयुक्त, रेंज-1, मंगलूर

मुख्य आयकर आयुक्त (क्षे.प.वि.नि.के.), बेंगलूर क्षेत्र

- 1 कार्यालय मुख्य आयकर आयुक्त (क्षे.प.वि.नि.के.), बेंगलूर
- 2 कार्यालय प्रधान आयकर आयुक्त (क्षे.प.वि.नि.के.)(नि.यू.)-1, बेंगलूर
- 3 कार्यालय आयकर अपर आयुक्त (क्षे.प.वि.नि.के.)(नि.यू.)-1(1), बेंगलूर
- 4 कार्यालय आयकर अपर आयुक्त (क्षे.प.वि.नि.के.)(नि.यू.)-1(2), बेंगलूर
- 5 कार्यालय आयकर अपर आयुक्त (क्षे.प.वि.नि.के.)(नि.यू.)-1(3), बेंगलूर
- 6 कार्यालय आयकर अपर आयुक्त (क्षे.प.वि.नि.के.)(नि.यू.)-1(4), बेंगलूर

- 7 कार्यालय प्रधान आयकर आयुक्त (क्षे.प.वि.नि.के.)(नि.यू.)-2, बेंगलूर
- 8 कार्यालय प्रधान आयकर आयुक्त (क्षे.प.वि.नि.के.)(नि.यू.)-3, बेंगलूर
- 9 कार्यालय आयकर अपर आयुक्त (क्षे.प.वि.नि.के.)(नि.यू.)-3(1), बेंगलूर
- 10 कार्यालय आयकर अपर आयुक्त (क्षे.प.वि.नि.के.)(नि.यू.)-3(2), बेंगलूर
- 11 कार्यालय आयकर अपर आयुक्त (क्षे.प.वि.नि.के.)(नि.यू.)-3(3), बेंगलूर
- 12 कार्यालय आयकर अपर आयुक्त (क्षे.प.वि.नि.के.)(नि.यू.)-3(4), बेंगलूर
- 13 कार्यालय प्रधान आयकर आयुक्त, (क्षे.प.वि.नि.के.)(स.ई.)-1, बेंगलूर
- 14 कार्यालय प्रधान आयकर आयुक्त (क्षे.प.वि.नि.के.)(वी.यू.)-1, बेंगलूर
- 15 कार्यालय प्रधान आयकर आयुक्त (क्षे.प.वि.नि.के.)(नि.यू.)-1, मैसूर
- 16 कार्यालय आयकर संयुक्त आयुक्त (क्षे.प.वि.नि.के.)(नि.यू.)-1(1), मैसूर
- 17 कार्यालय आयकर संयुक्त आयुक्त (क्षे.प.वि.नि.के.)(नि.यू.)-1(2), मैसूर
- 18 कार्यालय आयकर संयुक्त आयुक्त (क्षे.प.वि.नि.के.)(नि.यू.)-1(3), मैसूर
- 19 कार्यालय आयकर संयुक्त आयुक्त (क्षे.प.वि.नि.के.)(नि.यू.)-1(4), मैसूर

आयकर निदेशक (आसूचना एवं आपराधिक अन्वे.), बेंगलूर क्षेत्र

- 1 कार्यालय आयकर निदेशक (आसूचना एवं आपराधिक अन्वे.), बेंगलूर

आयकर आयुक्त (छूट), बेंगलूर क्षेत्र

- 1 कार्यालय आयकर आयुक्त (छूट) , बेंगलूर
- 2 कार्यालय आयकर अधिकारी, वार्ड-1 (छूट) यूनिट, मंगलूर
- 3 कार्यालय आयकर अधिकारी, वार्ड-1 (छूट), मैसूर
- 4 कार्यालय आयकर अधिकारी, वार्ड-1 (छूट) कलबुर्गी
- 5 कार्यालय आयकर अधिकारी, वार्ड-1 (छूट) पणजी

मुख्य आयकर आयुक्त (टी.डी.एस.), बेंगलूर क्षेत्र

- 1 कार्यालय मुख्य आयकर आयुक्त (टीडीएस) (मुख्यालय), बेंगलूर
- 2 कार्यालय आयकर अपर आयुक्त (टीडीएस), रेंज-1, बेंगलूर
- 3 कार्यालय आयकर अपर आयुक्त (टीडीएस), रेंज-2, बेंगलूर
- 4 कार्यालय आयकर आयुक्त (टीडीएस), पणजी
- 5 कार्यालय आयकर संयुक्त आयुक्त (टीडीएस), रेंज हुब्बल्ली

[फा. सं. ई-30018/1/2024- डीडी (ओएल) डीओआर]

शिशिर शर्मा, संयुक्त निदेशक (राजभाषा)

MINISTRY OF FINANCE

(Department of Revenue)

(CENTRAL BOARD OF DIRECT TAXES)

New Delhi, the 7th February, 2025

S.O. 166.—In pursuance of sub rule (4) of Rule 10 of the Official Languages (Use for Official Purpose of the Union) Rules, 1976, the Central Government, hereby notifies, the following offices under Department of Revenue where more than 80% staff has acquired the working knowledge of Hindi:

PRINCIPAL CHIEF COMMISSIONER OF INCOME-TAX, BENGALURU REGION

- 1 O/o The PRINCIPAL CHIEF COMMISSIONER OF INCOME TAX, Bengaluru
- 2 O/o The COMMISSIONER OF INCOME TAX (Admin & TPS), Bengaluru
- 3 O/o The COMMISSIONER OF INCOME TAX (Audit), Bengaluru
- 4 O/o The COMMISSIONER OF INCOME TAX (Judicial), Bengaluru
- 5 O/o The INCOME TAX APPELLATE TRIBUNAL (ITAT), Bengaluru
- 6 O/o The CCIT (REFAC), Patto
- 7 O/o The PCIT (REAC) (AU)-1, Patto
- 8 O/o The Addl.CIT/JCIT (REAC) (AU)-1(1), Patto
- 9 O/o The Addl.CIT/JCIT (REAC) (AU)-1(2), Patto
- 10 O/o The Addl.CIT/JCIT (REAC) (AU)-1(3), Patto
- 11 O/o The Addl.CIT/JCIT (REAC) (AU)-1(4) , Patto
- 12 O/o The PCIT (RFAC)(VU)-1, Patto
- 13 O/o The Addl.CIT, RNG-1, Patto
- 14 O/o The PCIT (ReFAC) (RU) , Patto
- 15 O/o The Addl.CIT,REAC (RU)-1, Patto
- 16 O/o The Addl.CIT,REAC (RU)-1(2) , Patto
- 17 O/o The Addl.CIT,REAC (RU)-1(3) , Patto
- 18 O/o The National Academy of Direct Taxes, Regional Campus, Bengaluru
- 19 O/o The DGIT(INV.)(HQ),BENGALURU
- 20 O/o The Pr.CIT(Central)(HQ),BENGALURU
- 21 O/o The Addl.CIT(Central),Range-1,BENGALURU
- 22 O/o The Addl.CIT(Central),Range-2, BENGALURU
- 23 O/o The Addl.CIT(Central),Range-1, PANAJI
- 24 O/o The DCIT(Central),Renj-1, BELAGAVI
- 25 O/o The ACIT(Central),CIRCLE, HUBBALLI
- 26 O/o The DCIT(Central),CIRCLE,BALLARI
- 27 O/o The JCIT(Central), MANGALURU
- 28 O/o The JCIT(Central), MYSURU
- 29 O/o The JCIT(Central), HASSAN
- 30 O/o The Pr.DIT, PANAJI, Goa
- 31 O/o The CIT(APPEAL)-2, PANAJI
- 32 O/o The CIT(APPEAL)-11, BENGALURU
- 33 O/o The Pr.DIT(INV.)(HQ), BENGALURU
- 34 O/o The Addl.DIT(INV.), UNIT-1, BENGALURU
- 35 O/o The Addl.DIT(INV.), UNIT-2, BENGALURU
- 36 O/o The Addl.DIT(INV.), UNIT-3, BENGALURU
- 37 O/o The Addl.DIT(INV.), BPU,BENGALURU
- 38 O/o The Addl.DIT(INV.), FAIU,BENGALURU
- 39 O/o The Addl.DIT(INV.), MANGALURU
- 40 O/o The DCIT(INV.), MYSURU
- 41 O/o The ACIT(INV.), HASSAN
- 42 O/o The DIT(CPC), Bengaluru

CHIEF COMMISSIONER OF INCOME TAX, BENGALURU-2 REGION

- 1 O/o The CCIT, Bengaluru-2
- 2 O/o The Pr.CIT (AU)-1, Bengaluru

- 3 O/o The Addl.CIT (AU)-1(1),Bengaluru
- 4 O/o The Addl.CIT (AU)-1(2),Bengaluru
- 5 O/o The Addl.CIT (AU)-1(3),Bengaluru
- 6 O/o The Addl.CIT (AU)-1(4),Bengaluru
- 7 O/o The Pr.CIT (AU)-2,Bengaluru
- 8 O/o The Pr.CIT (AU)-3,Bengaluru
- 9 O/o The Addl.CIT (AU)-3(1),Bengaluru
- 10 O/o The Addl.CIT (AU)-3(2),Bengaluru
- 11 O/o The Addl.CIT (AU)-3(3),Bengaluru
- 12 O/o The Addl.CIT (AU)-3(4),Bengaluru
- 13 O/o The Pr.CIT (RU)-1,Bengaluru
- 14 O/o The Pr.CIT (VU)-1,Bengaluru
- 15 O/o The Pr.CIT (AU)-1,Mysuru
- 16 O/o The JCIT (AU)-1(1),Mysuru
- 17 O/o The JCIT (AU)-1(2),Mysuru
- 18 O/o The Addl.CIT (AU)-1(3),Mysuru
- 19 O/o The Addl.CIT (AU)-1(4),Mysuru
- 20 O/o The CIT (Appeal) Unit – 1,Bengaluru
- 21 O/o The CIT (Appeal) Unit - 2,Bengaluru
- 22 O/o The CIT (Appeal) Unit - 3,Bengaluru
- 23 O/o The CIT (Appeal) Unit - 4,Bengaluru
- 24 O/o The CIT (Appeal) Unit - 5,Bengaluru
- 25 O/o The CIT (Appeal) Unit – 6,Bengaluru
- 26 O/o The CIT (Appeal) Unit - 7,Bengaluru
- 27 O/o The CIT (Appeal) Unit - 8,Bengaluru
- 28 O/o The CIT (Appeal) Unit - 9,Bengaluru
- 29 O/o The CIT (Appeal) Unit - 10,Bengaluru
- 30 O/o The CIT (Appeal) Unit - 11,Bengaluru

CHIEF COMMISSIONER OF INCOME TAX, BENGALURU-1 REGION

- 1 O/o The CCIT, Bengaluru-1(HQ)Bengaluru
- 2 O/o The PRINCIPAL COMMISSIONER OF INCOME TAX -1, Bengaluru
- 3 O/o The ADDITIONAL/JOINT COMMISSIONER OF INCOME TAX, RNG-1(1), Bengaluru
- 4 O/o The ADDITIONAL/JOINT COMMISSIONER OF INCOME TAX, RNG-6(1), Bengaluru
- 5 O/o The Pr.CIT-2,(HQ)Bengaluru
- 6 O/o The Addl.CIT/JCIT ,Range-2(1),Bengaluru
- 7 O/o The ITO,Ward-1,Tumkuru
- 8 O/o The ITO, Tiptur
- 9 O/o The Addl. CIT/JCIT ,Range-2(2), Bengaluru
- 10 O/o The Addl. CIT/JCIT ,Range-4(1), Bengaluru
- 11 O/o The ITO, Ward-1,Kolar
- 12 O/o The Addl. CIT/JCIT ,Range-4(3), Bengaluru
- 13 O/o The Addl.CIT/JCIT ,Range-7(1),Bengaluru
- 14 O/o The Pr.CIT-3, (HQ)Bengaluru
- 15 O/o The Addl.CIT/JCIT, Range-3(1), Bengaluru
- 16 O/o The ITO, Ward-1, Ramnagara
- 17 O/o The Addl.CIT/JCIT, Range-3(3), Bengaluru

- 18 O/o The Addl.CIT/JCIT, Range-1Mysuru
- 19 O/o The ITO,Ward-1, Chamrajnagar
- 20 O/o The ITO,Ward-1, Mandya
- 21 O/o The ITO,Ward-1, Hassan
- 22 O/o The ITO,Ward-1, Chikkamangaluru
- 23 O/o The ITO,Ward-1, Madikeri
- 24 O/o The Pr.CIT, HUBBALLI
- 25 O/o The Pr.CIT, Panaji
- 26 O/o The JCIT,Range-1,Panaji
- 27 O/o The Addl.CIT,Range-1, Mangluru

CHIEF COMMISSIONER OF INCOME TAX (RE.F.A.C), BENGALURU REGION

- 1 O/o The CCIT(Re.F.A.C), Bengaluru
- 2 O/o The Pr.CIT(Re.F.A.C)(AU)-1, Bengaluru
- 3 O/o The Addl.CIT(Re.F.A.C)(AU)-1(1), Bengaluru
- 4 O/o The Addl.CIT(Re.F.A.C)(AU)-1(2), Bengaluru
- 5 O/o The Addl.CIT(Re.F.A.C)(AU)-1(3), Bengaluru
- 6 O/o The Addl.CIT(Re.F.A.C)(AU)-1(4), Bengaluru
- 7 O/o The Pr.CIT(Re.F.A.C)(AU)-2, Bengaluru
- 8 O/o The Pr.CIT(Re.F.A.C)(AU)-3, Bengaluru
- 9 O/o The Addl.CIT(Re.F.A.C)(AU)-3(1), Bengaluru
- 10 O/o The Addl.CIT(Re.F.A.C)(AU)-3(2), Bengaluru
- 11 O/o The Addl.CIT(Re.F.A.C)(AU)-3(3), Bengaluru
- 12 O/o The Addl.CIT(Re.F.A.C)(AU)-3(4), Bengaluru
- 13 O/o The Pr.CIT(Re.F.A.C)(RU)-1, Bengaluru
- 14 O/o The Pr.CIT(Re.F.A.C)(VU)-1, Bengaluru
- 15 O/o The Pr.CIT(Re.F.A.C)(AU)-1, Mysuru
- 16 O/o The JCIT(Re.F.A.C)(AU)-1(1), Mysuru
- 17 O/o The JCIT(Re.F.A.C)(AU)-1(2), Mysuru
- 18 O/o The Addl.CIT(Re.F.A.C)(AU)-1(3), Mysuru
- 19 O/o The Addl.CIT(Re.F.A.C)(AU)-1(4), Mysuru

DIRECTOR OF INCOME TAX (INTELLIGENCE & CRIMINAL INVESTIGATION), BENGALURU REGION

- 1 O/o The DIT(Intelligence & Criminal Investigation), Bengaluru

COMMISSIONER OF INCOME TAX (EXEMPTION), BENGALURU REGION

- 1 O/o The CIT (Exemption), Bengaluru
- 2 O/o The ITO, Ward-1 (Exemption Unit), Mangaluru
- 3 O/o The ITO, Ward-1 (Exemption) Mysuru
- 4 O/o The ITO , Ward-1 (Exemption) Kalburgi
- 5 O/o The ITO Ward-1 (Exemption) Panaji

CHIEF COMMISSIONER OF INCOME TAX (TDS), BENGALURU REGION

- 1 O/o The CCIT (TDS) (HQ), Bengaluru
- 2 O/o The Addl. CIT(TDS), Range-1, Bengaluru
- 3 O/o The Addl. CIT(TDS), Range-2, Bengaluru
- 4 O/o The CIT(TDS), Panaji
- 5 O/o The JCIT (TDS) , Range Hubballi

[F. No. E-30018/1/2024- DD (OL) DOR]

SHISHIR SHARMA, Jt. Director (OL)

विदेश मन्त्रालय**(सी.पी.वी. प्रभाग)**

नई दिल्ली, 4 फरवरी, 2025

का.आ. 167.—राजनयिक और कौंसुलीय अधिकारी (शपथ एवं फीस) के अधिनियम, 1948 की धारा 2 के खंड (क) के अनुसरण में वैधानिक आदेश।

एतद्वारा, केंद्र सरकार भारतीय उच्चायोग, ब्रुनेई दारुस्सलाम में श्री अरविंद कुमार, कनिष्ठ सचिवालय सहायक को 04 फरवरी, 2025 से सहायक कांसुलर अधिकारी के रूप में कांसुलर सेवाओं का निर्वहन करने के लिए अधिकृत करती है।

[फा. सं. टी.4330/01/2025(03)]

एस.आर.एच. फहमी, निदेशक (सीपीवी)

MINISTRY OF EXTERNAL AFFAIRS**(CPV Division)**

New Delhi, the 4th February, 2025

S.O. 167.—Statutory Order in pursuance of clause (a) of the Section 2 of the Diplomatic and Consular Officers (Oaths and fees) Act, 1948 (41 of 1048), the Central Government hereby appoints Shri Arvind Kumar, Junior Secretariat Assistant in the High Commission of India, Brunei Darussalam as Assistant Consular Officer to perform Consular services with effect from February 4, 2025.

[F. No. T. 4330/01/2025(03)]

S.R.H FAHMI, Director (CPV)

नई दिल्ली, 7 फरवरी, 2025

का.आ. 168.—राजनयिक और कौंसुलीय अधिकारी (शपथ एवं फीस) के अधिनियम, 1948 की धारा 2 के खंड (क) के अनुसरण में वैधानिक आदेश।

एतद् द्वारा, सरकार भारत के दूतावास, जूबा (दक्षिण सूडान) में श्री जीवेश लाकड़ा, आशुलिपिक, को फरवरी 07, 2025 से सहायक कांसुलर अधिकारी के रूप में कांसुलर सेवाओं का निर्वहन करने के लिए अधिकृत करती है।

[फा. सं. टी. 4330/01/2025(04)]

एस.आर.एच. फहमी, निदेशक (सीपीवी)

New Delhi, the 7th February, 2025

S.O. 168.—Statutory Order in pursuance of the clause (a) of the Section 2 of the Diplomatic and Consular Officers (Oaths and fees) Act, 1948 (41 of 1048), the Central Government hereby appoints Shri Jeevesh Lakra, Steno as Assistant Consular Officer in the Embassy of India, Juba (South Sudan), to perform the consular services as Assistant Consular Officer with effect from February 7, 2025.

[F. No. T. 4330/01/2025(04)]

S.R.H FAHMI, Director (CPV)

नई दिल्ली, 7 फरवरी, 2025

का.आ. 169.—राजनयिक और कौंसुलीय अधिकारी (शपथ एवं फीस) के अधिनियम, 1948 की धारा 2 के खंड (क) के अनुसरण में वैधानिक आदेश।

एतद्द्वारा, सरकार भारतीय उच्चायोग, नैरोबी में श्री शंकर सिंह जाडेजा, सहायक अनुभाग अधिकारी, को फरवरी 07, 2025 से सहायक कांसुलर अधिकारी के रूप में कांसुलर सेवाओं का निर्वहन करने के लिए अधिकृत करती है।

[फा. सं. टी. 4330/01/2025(05)]

एस.आर.एच. फहमी, निदेशक (सीपीवी)

New Delhi, the 7th February, 2025

S.O. 169.—Statutory Order in pursuance of the clause (a) of the Section 2 of the Diplomatic and Consular Officers (Oaths and fees) Act, 1948 (41 of 1048), the Central Government hereby appoints Shri Shankar Singh Jadeja, Assistant Section Officer as Assistant Consular Officer in the High Commission of India, Nairobi, to perform the consular services as Assistant Consular Officer with effect from February 7, 2025.

[F. No. T. 4330/01/2025(05)]

S.R.H FAHMI, Director (CPV)

कार्मिक, लोक शिकायत और पेंशन मंत्रालय

(कार्मिक और प्रशिक्षण विभाग)

नई दिल्ली, 4 सितम्बर, 2024

का.आ. 170.—केंद्रीय सरकार, भारतीय नागरिक सुरक्षा संहिता, 2023 (2023 का 46) की धारा 18 की उपधारा (8) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, भारत सरकार कार्मिक, लोक शिकायत और पेंशन मंत्रालय (कार्मिक और प्रशिक्षण विभाग) की अधिसूचना सं. का.आ. 934 तारीख 7 जून, 2018, जो भारत के राजपत्र, भाग II, खंड 3, उपखंड (ii), तारीख 16.06.2018 में प्रकाशित हुई थी, में निम्नलिखित संशोधन करती है, अर्थात्:-

2. उक्त अधिसूचना,-

(क) क्रम सं. (2) में “आरसी 3 ई 1998” अक्षरों, अंकों और कोष्ठक के स्थान पर “आरसी-2 (ई)/1998” अक्षर, अंक और कोष्ठक रखे जाएंगे और 7 जून, 2018 से रखे गए समझे जाएंगे।

(ख) क्रम सं. (6) और उससे संबंधित प्रविष्टियों के स्थान पर निम्नलिखित क्रम सं. और प्रविष्टियां रखी जाएंगी, और 7 जून, 2018 से रखी गई समझी जाएंगी, अर्थात्:-

“(6) आरसी-6 (ई)/2006-ईओडब्ल्यू-II, मैसर्स दुर्गा ओवरसीज प्राईवेट लिमिटेड सीबीआई बनाम प्रवीण चुघ”।

[फा. सं. 225/14/2017-एवीडी-II]

सत्यम श्रीवास्तव, अवर सचिव

स्पष्टीकारक ज्ञापन—अधिसूचना का.आ. 934 तारीख 7 जून, 2018 में क्रम सं. 2 और क्रम सं. 6 तक कतिपय टंकण संबंधी त्रुटियां हो गई हैं। उन्हें दूर करने के लिए उक्त अधिसूचना का 7 जून, 2018 से भूतलक्षी रूप से संशोधन किया जा रहा है।

टिप्पण—मूल अधिसूचना भारत के राजपत्र, भाग II, खंड 3, उपखंड (ii), तारीख 16.06.2018 में प्रकाशित हुई थी।

MINISTRY OF PERSONNEL, PUBLIC GRIEVANCES AND PENSIONS

(Department Of Personnel And Training)

New Delhi, the 4th September, 2024

S.O. 170.—In exercise of the powers conferred by sub-section (8) of section 18 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (46 of 2023), the Central Government hereby makes the following amendments in the notification of the Government of India, Ministry of Personnel, Public Grievance and Pensions (Department of

Personnel and Training) vide number S.O. 934, dated 7th June, 2018, published in the Gazette of India, Part-II, Section 3, Sub-section (ii), dated 16.06.2018, namely:-

2. In the said notification, -

(a) in serial number (2), for the letters and figures “RC 3 E 1998”, the letters, figures and brackets “RC-2(E)/1998” shall be substituted and shall be deemed to have been substituted with effect from 7th June, 2018;

(b) for serial number (6) and the entries relating thereto, the following serial number and entries shall be substituted and shall be deemed to have been substituted with effect from 7th June, 2018, namely: -

“(6) RC-6(E)/2006-EOW-II, M/s Durga Overseas Pvt. Ltd. CBI Vs. Praveen Chugh”.

[F. No. 225/14/2017-AVD-II]

SATYAM SRIVASTAVA, Under Secy.

Explanatory Memorandum.—In the Notification S.O. 934, dated 7th June, 2018, certain typographical errors have been occurred at serial numbers (2) and (6). In order to rectify the same, the said notification is being amended with retrospective effect from 7th June, 2018.

Note.—Principal notification was published in the Gazette of India, Part II, Section 3, Sub-section (ii) dated 16th June, 2018 vide S.O. 934 dated 7th June, 2018.

नई दिल्ली, 23 दिसम्बर, 2024

का.आ. 171.—केन्द्रीय सरकार, आतंकवादी और विध्वंसकारी क्रियाकलाप (निवारण) अधिनियम, 1987 (1987 का 28) की धारा 13 की उपधारा (1) के परंतुक द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, आतंकवादी और विध्वंसकारी क्रियाकलाप (निवारण) अधिनियम, 1987 की धारा 9 के अधीन गठित माननीय अपर सेशन न्यायाधीश के न्यायालय, अभिहित न्यायालय जम्मू, जम्मू-कश्मीर संघ राज्यक्षेत्र में दिल्ली विशेष पुलिस स्थापन (केन्द्रीय अन्वेषण ब्यूरो) द्वारा संस्थित मामले आरसी 08(एस)/1990-एससीयू.वी/एससी.II/सीबीआई/नई दिल्ली तथा तत्संबद्ध मामले से संसक्त या उसके आनुषंगिक किसी अन्य विषय के अभियोजन का संचालन करने के लिए, श्री शैल कुमार भट्ट, अधिवक्ता को विशेष लोक अभियोजक के रूप में मामले के निपटारे तक या अगले आदेश तक, जो भी पूर्वतर हो, नियुक्त करती है।

[फा. सं. 225/28/2024-एवीडी-II]

राजीव कुमार खरे, अवर सचिव

New Delhi, the 23rd December, 2024

S.O. 171.—In exercise of the powers conferred by the proviso to sub section (1) of section 13 of the Terrorist and Disruptive Activities (Prevention) Act, 1987 (28 of 1987), the Central Government hereby appoints Shri Shaila Kumar Bhat, Advocate as Special Public Prosecutor, for conducting prosecution of case RC. 08/(S)/1990-SCU.V/SC.II/CBI/New Delhi and any other matter connected therewith or incidental thereto, instituted by the Delhi Special Police Establishment (Central Bureau of Investigation) in the Court of Additional Sessions Judge, Designated Court at Jammu, union territory of Jammu and Kashmir, constituted under section 9 of the Terrorist and Disruptive (Prevention) Act, 1987, till the disposal of the case or till further order, whichever is earlier.

[F. No. 225/28/2024-AVD-II]

RAJEEV KUMAR KHARE, Under Secy.

नई दिल्ली, 27 दिसम्बर, 2024

का.आ. 172.—केन्द्रीय सरकार, भारतीय नागरिक सुरक्षा संहिता, 2023 (2023 का 46) की धारा 18 की उपधारा (8) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, श्री सैकत नाग, अधिवक्ता को, विशेष न्यायाधीश, दीमापुर, नागालैंड के न्यायालय के दिल्ली विशेष पुलिस स्थापन (केन्द्रीय अन्वेषण ब्यूरो) द्वारा संस्थापित मामलों के अभियोजन का संचालन करने के लिए, उनके पदग्रहण करने की तारीख से तीन वर्ष की अवधि के लिए या अगले आदेशों तक, जो भी पहले हो, विशेष लोक अभियोजक के रूप में नियुक्त करती है।

[फा. सं. 225/34/2024-एवीडी-II]

सत्यम श्रीवास्तव, अवर सचिव

New Delhi, the 27th December, 2024

S.O. 172.—In exercise of the powers conferred by sub-section (8) of section 18 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (46 of 2023), the Central Government hereby appoints Shri Saikat Nag, Advocate as Special Public Prosecutor for conducting prosecution of the cases instituted by the Delhi Special Police Establishment (Central Bureau of Investigation) in the Court of Special Judge, Dimapur, Nagaland for a period of three years from the date of assumption of charge or till further orders, whichever is earlier.

[F. No. 225/34/2024-AVD-II]

SATYAM SRIVASTAVA, Under Secy.

नई दिल्ली, 17 जनवरी, 2025

का.आ. 173.—केंद्रीय सरकार, भारतीय नागरिक सुरक्षा संहिता, 2023 (2023 का 46) की धारा 18 की उपधारा (8) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, किसी राज्य या संघ राज्यक्षेत्र प्रशासनों के विचारण न्यायालयों में दिल्ली विशेष पुलिस स्थापन (केन्द्रीय अन्वेषण ब्यूरो) द्वारा संस्थित मामलों में अभियोजन संचालित करने तथा विधि द्वारा स्थापित किसी पुनरीक्षण न्यायालय या अपील न्यायालय में इन मामलों से या उनसे संबंधित किसी अपील, पुनरीक्षण या अन्य मामले के लिए नीचे सारणी में उल्लिखित केन्द्रीय अन्वेषण ब्यूरो के निम्नलिखित अभियोजन अधिकारियों को विशेष लोक अभियोजक के रूप में अगले आदेश होने तक नियुक्त करती है, अर्थात्:-

सारणी

क्र. सं.	सर्वश्री/श्रीमती/सुश्री	क्र. सं.	सर्वश्री/श्रीमती/सुश्री
1	विवेक कुमार श्रीवास्तव	2	जे. के. शर्मा
3	मनोज कुमार	4	राजेश कुमार
5	पंकज कुमार राजपूत	6	अरविंद कुमार
7	अर्जुन जी.	8	तेजस्वी प्रकाश नेगी
9	तजविंदर सिंह	10	ओम प्रकाश
11	योगेश कुमार करहाना	12	नवीन कुमार गिरी
13	डॉ. ज्योत्सना शर्मा पांडेय	14	पंकज गुप्ता
15	विनय कुमार ओझा	16	यू. सी. सक्सेना
17	अजय कुमार राव	18	प्रणीत शर्मा
19	आशुतोष शर्मा	20	जय किशन
21	सैयद सलमान अहमद	22	रामबाबू कनौजिया
23	ब्रजेश कुमार यादव	24	आशीष कुमार सक्सेना
25	पूर्णिमा गुप्ता	26	शोभित सिंह
27	उमा शंकर त्रिपाठी	28	अजय पाल
29	लाल चंद पाल	30	प्रियांशु सिंह
31	कुलदीप पुष्कर	32	संदीप गौरव
33	अनिल बंसल	34	भानु प्रकाश
35	विकास खत्री	36	गुफरान अहमद
37	परिंदर कुमार	38	मुरारी कुमार आर्य
39	नवनीत जावा	40	नील मणी
41	प्रमोद सिंह	42	बिंदु

43	जय हिंद	44	मंदीप सिंह मान
45	सायबा. एस	46	रचना साहू
47	नौशाद पीएम	48	यू. अखिला
49	मनफूल बिश्नोई	50	विवेक सिन्हा
51	जगदीश दायमा	52	सतीश कुमार
53	अभिषेक अरोड़ा	54	संदीप चौधरी
55	सुशील कुमार पांडेय	56	दीप नारायण
57	अतुल कुमार	58	शादस. सी
59	राम्या प्रसाद	60	लिसा ग्रोवर
61	अनुज शर्मा	62	विक्रमजीत यादव
63	मंजीत सिंह	64	अंजलि लोखंडे

[फा. सं. 225/31/2024-एवीडी-II]

सत्यम श्रीवास्तव, अवर सचिव

New Delhi, the 17th January, 2025

S.O. 173.—In exercise of the powers conferred by sub-section (8) of section 18 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (46 of 2023), the Central Government hereby appoints the following Prosecuting Officers of Central Bureau of Investigation, mentioned in the Table below, as Special Public Prosecutors for conducting prosecution in cases instituted by Delhi Special Police Establishment (Central Bureau of Investigation) in trial courts in any State or Union Territory Administrations and any appeal, revision or other matter arising out of or connected with these cases in any revisional or appellate Court, established by Law, till further order, namely:-

TABLE

Sl. No.	S/Shri/Smt./Ms	S. N.	S/Shri/Smt./Ms
1	Vivek Kumar Srivastava	2	J. K. Sharma
3	Manoj Kumar	4	Rajesh Kumar
5	Pankaj Kumar Rajput	6	Arvind Kumar
7	Arjunan G.	8	Tejasvi Prakash Negi
9	Tajvinder Singh	10	Om Prakash
11	Yogesh Kumar Karhana	12	Navin Kumar Giri
13	Dr. Jyotsna Sharma Pandey	14	Pankaj Gupta
15	Vinay Kumar Ojha	16	U. C. Saxena
17	Ajai Kumar Rao	18	Praneet Sharma
19	Ashutosh Sharma	20	Jai Kishan
21	Sayed Salman Ahmad	22	Rambabu Kanaujiya
23	Brajesh Kumar Yadav	24	Ashish Kumar Saxena
25	Poornima Gupta	26	Shobhit Singh
27	Uma Shankar Tripathi	28	Ajay Pal
29	Lal Chand Pal	30	Priyanshu Singh
31	Kuldeep Pushkar	32	Sandeep Gaurav
33	Anil Bansal	34	Bhanu Prakash
35	Vikas Khatri	36	Gufaran Ahamad
37	Papinder Kumar	38	Murari Kumar Arya
39	Navneet Jawa	40	Neel Mani
41	Pramod Singh	42	Bindu

43	Jai Hind	44	Mandeep Singh Mann
45	Syba. S	46	Rachna Sahu
47	Noushad PM	48	U. Akhila
49	Manphool Bishnoi	50	Vivek Sinha
51	Jagdish Dayma	52	Satish Kumar
53	Abhishek Arora	54	Sandeep Chaudhary
55	Sushil Kumar Pandey	56	Dip Narain
57	Atul Kumar	58	Shadas. C
59	Ramya Prasad	60	Lisa Grover
61	Anuj Sharma	62	Vikramjeet Yadav
63	Manjit Singh	64	Anjali Lokhande

[F. No. 225/31/2024-AVD-II]

SATYAM SRIVASTAVA, Under Secy.

स्वास्थ्य एवं परिवार कल्याण मंत्रालय

नई दिल्ली, 10 फरवरी, 2025

का.आ. 174.—केन्द्रीय सरकार सरकारी स्थान (अप्राधिकृत अधिभोगियों की बेदखली) अधिनियम, 1971 (1977 का 40) की धारा 3 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए नीचे दी गई सारणी के स्तंभ (1) में उल्लिखित अधिकारी, जो सरकार का राजपत्रित अधिकारी है, की उक्त अधिनियम के प्रयोजनों के लिए संपदा अधिकारी नियुक्त करती है, जो उक्त सारणी के स्तंभ (2) में तत्स्थानी प्रविष्टि में विनिर्दिष्ट सरकारी स्थान के सम्बंध में अपने अधिकार क्षेत्र की स्थानीय सीमाओं के भीतर उक्त अधिनियम द्वारा या उसके अधीन संपदा अधिकारियों को प्रदत्त शक्तियों का प्रयोग करेगा, और उन पर अधिरोपित कर्तव्यों का पालन करेगा।

सारणी	
अधिकारी का पदनाम	सरकारी संस्थान की श्रेणियाँ और अधिकार क्षेत्र की स्थानीय सीमाएं
सीएमओ (एनएफएसजी) डॉ. एम पुनीता, केन्द्रीय कुष्ठ रोग शिक्षण एवं अनुसंधान संस्थान, चेंगलपट्टु, तमिलनाडु।	चेंगलपट्टु, तमिलनाडु में स्थित केन्द्रीय कुष्ठ रोग शिक्षण एवं अनुसंधान संस्थान, चेंगलपट्टु, तमिलनाडु के प्राशासनिक नियंत्रण के अंतर्गत सभी भूखंड और भवन।

[फा. संख्या ए-11011/47/2023-लेप्रो.]

श्रीकांत सिंह कुशवाहा, अवर सचिव

MINISTRY OF HEALTH AND FAMILY WELFARE

New Delhi, the 10th February, 2025

S.O. 174.—In exercise of the powers conferred by Section 3 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (40 of 1977, the Central Government hereby, appoints the officer mentioned in column (1) of the Table below, being a gazetted officer of the Government, to be an estate officer for the purposes of the said Act, who shall exercise the powers conferred, and perform the duties imposed, on estate officers by or under the said Act, within the local limits of his jurisdiction in respect of the public premises specified in the corresponding entry in column (2) of the said Table.

TABLE

Designation of the officer	Categories of public premises and local limits of jurisdiction
1	2
CMO(NFSG) Dr. M. Punitha Central Leprosy Teaching and Research Institute, Chengalpattu, Tamil Nadu.	All lands and buildings under the administrative control of the Central leprosy Teaching and Research Institute, Chengalpattu, Tamil Nadu, situated in Changalpattu, Tamil Nadu.

[F. No. A-11011/47/2023-Lep.]

SRIKANT SINGH KUSHWAHA, Under Secy.

सूचना और प्रसारण मंत्रालय

नई दिल्ली, 4 फरवरी, 2025

का.आ. 175.—केंद्र सरकार, राजभाषा (संघ के शासकीय प्रयोजनों के लिए प्रयोग) नियम, 1976 के नियम 10 के उप नियम (4) के अनुसरण में दूरदर्शन महानिदेशालय के अधीनस्थ कार्यालय यथा दूरदर्शन केंद्र, भोपाल जिनके 80% से अधिक कर्मचारियों ने हिंदी का कार्यसाधक ज्ञान प्राप्त कर लिया है, को अधिसूचित करती है।

[फा. सं. ई-11017/02/2025-हिंदी]

जसवंत सिंह, सहायक निदेशक (राजभाषा)

MINISTRY OF INFORMATION AND BROADCASTING

New Delhi, the 4th February, 2025

S.O. 175.—In pursuance of Sub-Rule (4) of Rule 10 of the Official Languages (Use for Official Purposes of the Union) Rules, 1976, the Central Government hereby notifies the subordinate office of Directorate General, Doordarshan namely Doordarshan Kendra, Bhopal whereof more than 80% of the staff have acquired the working knowledge of Hindi.

[F. No. E-11017/02/2025-Hindi]

JASWANT SINGH, Assistant Director (O.L.)

सड़क परिवहन और राजमार्ग मंत्रालय

(राजभाषा अनुभाग)

नई दिल्ली, 10 फरवरी, 2025

का.आ. 176.—केंद्रीय सरकार राजभाषा (संघ के शासकीय प्रयोजनों के लिए प्रयोग) नियम 1976 के नियम 10 के उपनियम (4) के अनुसरण में क्षेत्रीय कार्यालय, भारतीय राष्ट्रीय राजमार्ग प्राधिकरण, जयपुर, जिसके 80% से अधिक कर्मचारियों ने हिंदी कार्यसाधक ज्ञान प्राप्त कर लिया है, को अधिसूचित करती है।

[फा. सं. ई.-12012/1/2023-विविध/हिंदी]

कमलेश चतुर्वेदी, संयुक्त सचिव (राजभाषा)

MINISTRY OF ROAD TRANSPORT AND HIGHWAYS

(Official Language Section)

New Delhi, the 10th February, 2025

S.O. 176.—In pursuance of Sub Rule (4) of Rule 10 of the Official Language (Use for official purposes of the Union) Rules, 1976, the Central Government hereby notify Regional Office, National Highway Authority of India, Jaipur, where more than 80% staff have acquired the working knowledge of Hindi.

[F. No. E. 12012/1/2023-Misc./Hindi]

KAMLESH CHATURVEDI, Jt. Secy. (O.L.)

श्रम एवं रोजगार मंत्रालय

नई दिल्ली, 20 जनवरी, 2025

का.आ. 177.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार महाप्रबंधक, भारत संचार निगम लिमिटेड, अहमदनगर, महाराष्ट्र, के प्रबंधन के संबद्ध नियोजकों और श्री अमोल सुधाकर जोशी, कामगार, के बीच अनुबंध में निर्दिष्ट औद्योगिक न्यायालय, अहमदनगर, पंचाट(संदर्भ संख्या **Reference (I.T)No.05/2019(CNR-MHLC-160000712019)** को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 17.01.2025 को प्राप्त हुआ था।

[सं. एल – 40012/14/2018-आईआर (डीयू)]

दिलीप कुमार, अवर सचिव

MINISTRY OF LABOUR AND EMPLOYMENT

New Delhi, the 20th January, 2025

S.O. 177.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (**Reference(I.T)No. 05/2019(CNR-MHLC-160000712019)**) of the **Industrial Court, Ahmednagar**, as shown in the Annexure, in the Industrial dispute between the employers in relation to **The General Manager, Bharat Sanchar Nigam Ltd., Ahmednagar, Maharashtra, and Shri Amol Sudhakar Joshi, Worker**, which was received along with soft copy of the award by the Central Government on 17.01.2025.

[No. L-40012/14/2018-IR (DU)]

DILIP KUMAR, Under Secy.

ANNEXURE

IN THE INDUSTRIAL COURT AT AHMEDNAGAR. BEFORE SAMEENA KHAN, MEMBER.

Reference (I.T.) No. 05/2019.

(CNR – MHIC-160000712019)

The General Manager,
Bharat Sanchar Nigam Ltd.,
DTO Compund Near GPO,
Ahmednagar, Maharashtra – 414001.

... First Party.

VERSUS

Sh. Amol Sudhakar Joshi,
Post. Naour, Tal. Shrirampur,
Distt. Ahmednagar, Ahmednagar – 414001

....Second Party.

APPEARANCE :- Shri. A. V. Patil, Ld. Adv. for First Party.

Shri. K. Y. Modgekar, Ld. Adv. for Second Party.

Reference (I.T.) No. 05/2019.

AWARD

(Delivered on 18/12/2024)

1. The Central Government, in exercise of its powers under Clause (d) of Sub-section (1) and Sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947, has referred the dispute between the parties for adjudication. Initially, the dispute was referred to the Industrial Tribunal, Pune (Maharashtra). However, vide order dated 06.06.2019 in Transfer Application, the Hon'ble President, Industrial Court, Maharashtra, Mumbai has transferred the matter to this Industrial Tribunal.

2. The dispute between the parties as per the terms of Reference and Order dated 13.02.2019 is Scheduled as follows :-

"Whether the Industrial dispute raised by Shri Amol Sudhakar Joshi against M/s Siena Buildcon (Contractor) and the BSNL, Ahmednagar, Maharashtra (Principal Employer) seeking for permanency / regularization, with continuity of services and full back wages as an industrial dispute under Section 2(k) of ID Act 1947 and the workman who has raised the dispute is a workman under Section 2(s) of ID Act 1947? 2. Whether the various Contracts awarded by the Principal Employer ie. BSNL Ahmednagar Maharashtra in favour of contractors since 2014 for hiring services in store department are valid in law? 3. Whether the appointment of Contractor since 2014 for hiring services in store department is valid in law. 4. Whether the applicant Sh. Amol Sudhakar Joshi is an employee of M/s. Siena Buildcon, or the Principal Employer ie. BSNL Ahmednagar? 5. Whether there are any violations of labour laws like Minimum Wages Act, 1948, the Contract Labour (R&A) Act, 1970 and the Equal Remuneration Act, 1976 by M/s. Siena Buildcon, Ahmednagar (Contractor) and the Principal Employer i.e. BSNL, Ahmednagar? 6. Whether the claim of the applicant workman for permanency/regularization with continuity of service and full back wages is legal, justified and proper? and if yes, the relief entitled thereto?"

3. Second Party to the Reference / Workman has filed Statement of Claim at Exh. U-1, claiming the relief of permanency along with consequential benefits, and also reliefs on the basis of equal pay for equal work. It is also claimed by the Second Party that his oral termination since 01.07.2014 be set aside and he may be reinstated in service with continuity and full back wages.

4. The Second Party submits that he was in employment with the First Party i.e. Bharat Sanchar Nigam Limited (for short, hereinafter referred to as 'the BSNL'), in its Shrirampur Gramin Division in Store Department, since 01.07.2010. The nature of work performed by him is permanent and he is in continuous service with the BSNL since 01.07.2010 till 01.07.2014, when he was orally terminated from service. He has completed continuous service of 240 days in each year during his service tenure.

5. It is submitted that the Second Party was appointed by the BSNL and also he was allotted work by the BSNL. He was paid wages by the BSNL and his work was also controlled by the BSNL. Other permanent employees of the BSNL were granted wages and other benefits as per Government employees. However, the Second Party was paid only Rs. 3,000/- per month without any benefit of leave, etc.

6. It is further submitted that, since the initial appointment, the Second Party was shown to have been appointed through various Contractors. However, the Second Party submits that he was an employee of the BSNL. Since 01.07.2014, the Second Party is not allotted with any work and hence, he was orally terminated from service without any notice or compensation as required by the law. Juniors to the Second Party are still in service. Therefore, the Second Party submits that his termination be set aside by granting him reinstatement, continuity and full back wages along with grant of permanency in employment with the BSNL, with consequential benefits.

7. The BSNL appeared in the matter and filed its Written Statement at Exh. C-7, inter alia objecting the Reference as illegal and untenable in law. It is submitted that majority of demands of the Second Party are not subject matter of the Reference and this Tribunal cannot enlarge the scope of Reference. It is further submitted that the demands raised by the Second Party in the Statement of Claim are not supported by any legal and factual justification, nor the demands are supported by any documentary evidence. According to the BSNL, it is a Central Government undertaking and bound by law to follow the Rules of recruitment and procedure of appointment on any sanctioned post within the framework of approved staffing pattern. The Second Party was never appointed by the BSNL, nor he was specifically designated on any post, and there is no privity of contract of employment between the BSNL and the Second Party.

8. It is further submitted by the BSNL that independent agencies / Contractors are entrusted with the work of providing cable maintenance / line maintenance / housekeeping. The Second Party was appointed by such independent agency / Contractor. Independent Contractor used to control and supervise the work of Second Party as well as pay his salary and other service benefits. The appointment of Contractor was on the basis of agreement

between the BSNL and the respective Contractor, and 5 Reference (I.T.) No. 05/2019. in stipulation of the terms and conditions in the said agreement, the respective Contractor has undertaken the entire liability and responsibility of employees deployed by him. Therefore, since the Second Party was engaged through independent Contractor and discharging work as a Contract labourer for temporary duration, he is not entitled for any reliefs as claimed. With detailed contentions in the Written Statement, the BSNL has made submission in respect of its contentions that the Second Party cannot be treated as its employee.

9. Considering the above facts and circumstances, Issues have been framed by my Learned Predecessor at Exh. O-12, and I have given my findings on them, for the reasons stated below, are as under :-

Sr No.	Issues	Findings
1.	Whether there exists employer-employee relationship in between First Party and Second Party?	No
2.	Does the Second Party prove that, the First Party has illegally and improperly and without following the due procedure of law, terminated his services w.e.f. 01.07.2014?	No
3.	Whether the Second Party is entitled for the relief claimed?	No
4.	What Award?	As per final Award.

REASONS

As to Issue Nos. 1 to 4 :-

10. The Second Party / Workman did not appear in the matter after the Written Statement was filed. The Second Party/Workman was 6 Reference (I.T.) No. 05/2019. granted with ample and reasonable opportunity. The matter is old and was at the same stage, awaiting evidence of the Second party. However, since there was no presence of the Second Party, the matter is taken up for passing of Award by considering the material on record. A specific order to that effect is also passed below Exh. O-1 on 05.12.2024. Even today when the matter was called from time to time, the Second Party did not appear in the matter.

11. Considered the order of Reference, Statement of Claim, Written Statements and the entire material on record. In respect of his contentions in the Statement of Claim and notice of demand, the Second Party has not filed any documentary evidence on record. There is no oral evidence led by the Second Party to substantiate his claim.

12. The BSNL has filed documents on record to show that the work in the Sub Division was closed between the period from 2009 to 2019. The BSNL has filed documents which shows that many numbers of Exchanges have been closed during the span of time. There is no document on record to show relation of the Second Party in terms of employer-employee relationship with the BSNL. Therefore, the Second Party has failed to prove employer-employee relationship between himself and the BSNL.

13. The Second Party has claimed benefits of permanency in service with continuity and full back wages against the BSNL. Therefore, in absence of relationship between the BSNL and Second Party – Workman, the Second Party is not entitled for any relief as claimed.

14. In view of the above, Issue Nos. 1 to 3 are answered in 7 Reference (I.T.) No. 05/2019. negative, and therefore, the dispute between the parties referred by the Central Government is adjudicated and decided in negative. Hence, for issue No. 4, I pass the following Award.

AWARD

1. The Reference is answered in negative.
2. No order as to costs.
3. Copies of this Award be sent to Government of India, Ministry of Labour, New Delhi for publication and further necessary action.

SAMEENA KHAN, Member

Date : 18.12.2024.

नई दिल्ली, 27 जनवरी, 2025

का.आ. 178.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार रेजिडेंट मैनेजर, यूटिलिटी पावर टेक लिमिटेड, एनटीपीसी, ज्योति नगर, पेद्दापल्ली, तेलंगाना; महाप्रबंधक, रामागुंडम सुपर पावर थर्मल पावर स्टेशन, एनटीपीसी, ज्योति नगर, पेद्दापल्ली, तेलंगाना, के प्रबंधन के संबद्ध नियोजकों और श्री मन बहादुर, कामगार, के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण- सह-श्रम न्यायालय- हैदराबाद पंचाट(संदर्भ संख्या LC 7/2022) को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 27.01.2025 को प्राप्त हुआ था।

[सं. एल – 42025-07-2025-37-आईआर (डीयू)]

दिलीप कुमार, अवर सचिव

New Delhi, the 27th January, 2025

S.O. 178.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. ID. No. LC 7/2022) of the **Central Government Industrial Tribunal cum Labour Court— Hyderabad** as shown in the Annexure, in the Industrial dispute between the employers in relation **The Resident Manager, Utility Power Tech Limited, NTPC, Jyothi Nagar, Peddapalli, Telangana ;The General Manager, Ramagundam Super Power Thermal Power Station, NTPC, Jyothi Nagar, Peddapalli, Telangana and Shri Man Bahadur, Worker**, which was received along with soft copy of the award by the Central Government on 27.01.2025.

[No. L-42025-07-2025-37-IR (DU)]

DILIP KUMAR, Under Secy.

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT AT
HYDERABADPresent: - **Sri IRFAN QAMAR**

Presiding Officer

Dated the 6th day of November, 2024**INDUSTRIAL DISPUTE LC No.7/2022**

Between:

Man Bahadur,

S/o Late N Bahadur,

Aged :- 64 years, Occ: Ex-Loco Driver,

Emp Code. UA025220, R/o H.No. 7-2-43,

Kokumanavarithota, 1st Lane, 2nd Cross,

Donka Road, Guntur-522002.

.....Petitioner

AND

1. The Resident Manager,
Utility Power Tech Limited,
Ramagundam Super Tower
Thermal Power Station,
Beside TAD Electrical Office,
PTS, NTPC, Jyothi Nagar,
Peddapalli Dist, Telangana-505215.

2. The General Manager,
Ramagundam Super Power
Thermal Power Station,
NTPC, Jyothi Nagar,
Peddapalli Dist, Telangana -505215. Respondents

Appearances:

For the Petitioner: M.V.L.Narsaiah, Advocates

For the Respondent: None

AWARD

Sri Man Bahadur, who worked as Loco Driver (who will be referred to as the workman) has filed this petition under Sec. 2A(2) of the Industrial Disputes Act, 1947 against the 1st Respondents in terminating the services of petitioner vide orders dated 06.06.2022 as illegal arbitrary unconstitutional, untenable and unjustified and consequently direct the respondents to reinstate the services of the petitioner and duly granting all other consequential benefit, such as continuity of service, deference of back wages, pending allowances.

2. Petitioner absent on the date fixed for exparte Evidence. Despite sufficient opportunity accorded Petitioner remained absent and none present on behalf of Petitioner. Therefore, in absence of any substantiated evidence by Petitioner, the case is 'No Claim' award is passed.

Award is passed accordingly. Transmit.

Typed to my dictation by Shri Vinay Panghal, LDC corrected and signed by me on this the 6th day of November, 2024.

IRFAN QAMAR, Presiding Officer

Appendix of evidence

Witnesses examined for the

Witnesses examined for the

Petitioner

Respondent

NIL

NIL

Documents marked for the Petitioner

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 27 जनवरी, 2025

का.आ. 179.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार निदेशक, राष्ट्रीय पोषण संस्थान, जमाई ओरमानिया, तरनाका, हैदराबाद, के प्रबंधन के संबद्ध नियोजकों और श्री पी. दुर्गा प्रसाद, कामगार, के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण- सह-श्रम न्यायालय- हैदराबाद पंचाट(संदर्भ संख्या LC 147/2013) को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 27.01.2025 को प्राप्त हुआ था।

[सं. एल - 42025-07-2025-33-आईआर (डीयू)]

दिलीप कुमार, अवर सचिव

New Delhi, the 27th January, 2025

S.O. 179.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. ID. No. LC 147/2013) of the **Central Government Industrial Tribunal cum Labour Court— Hyderabad** as shown in the Annexure, in the Industrial dispute between the

employers in relation to **The Director, National Institute of Nutrition, Jamai Ormania, Tarnaka, Hyderabad, and Shri P. Durgaprasad, Worker**, which was received along with soft copy of the award by the Central Government on 27.01.2025.

[No. L-42025-07-2025-33-IR (DU)]

DILIP KUMAR, Under Secy.

ANNEXURE

**IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT AT
HYDERABAD**

Present: - **Sri IRFAN QAMAR**

Presiding Officer

Dated the 31st day of December, 2024

INDUSTRIAL DISPUTE LC No.147/2013

Between:

P. Durgaprasad, S/o. Late P. Krishna,

Aged about 23 years,

Occ: Casual Labourer,

National Institute of Nutrition,

Jamai Osmania, Tarnaka,

Hyderabad.

.....Petitioner

AND

National Institute of Nutrition,

Rep by its Director,

Jamai Ormania, Tarnaka,

Hyderabad-07.

... Respondents

Appearances:

For the Petitioner: T. Poorrna Chanderr Rao, Advocate

For the Respondent: Narasimha Sharma, Advocate of R1

Dr K K H M Syam Sundar, Advocate of R4

AWARD

Sri P. Durgaprasad, who worked as Contract Labourer (who will be referred to as the workman) has filed this petition under Sec. 2A(2) of the Industrial Disputes Act, 1947 against the Respondents to declare the so-called Contract invoked by the respondents as bogus, sham, ruse and camouflage only to deny the rightful benefits to the petitioners both in terms of payment of minimum wages and in terms of their eligibility for grant of regularization, while declaring the oral termination of the services of the petitioners as illegal, arbitrary and violative of Section 25-F of the Industrial Disputes Act and that their actions are unfair labour practices as defined under the I.D Act and Section 25-T, U and Schedule-V of the ID Act and as such consequently declare that the petitioner is the casual labourer of the respondent organization and the termination of the petitioner is bad in law, arbitrary and violative of Section 25-F of the ID Act and consequently declare that the petitioner is entitled for reinstatement with back wages and eligible for grant of regularization and be pleased to pass such other order or orders as this Hon'ble Tribunal may deem fit.

2. On the date fixed for Petitioner's evidence, Petitioner called absent. Despite providing sufficient opportunity Petitioner did not adduce any evidence to substantiate his claim. Therefore, a 'No claim' award is passed for want of evidence.

Award is passed accordingly. Transmit.

Typed to my dictation by Shri Vinay Panghal, LDC corrected and signed by me on this the 31st day of December, 2024.

IRFAN QAMAR, Presiding Officer

Appendix of evidence

Witnesses examined for the
Petitioner
NIL

Witnesses examined for the
Respondent
NIL

Documents marked for the Petitioner

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 28 जनवरी, 2025

का.आ. 180.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार **इलाहाबाद बैंक ऑफ इंडिया** के प्रबंधन, संबद्ध नियोजको और उनके **कर्मकार श्री संजय सेनगुप्ता** के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, **कोलकाता** के पंचाट (03/2015) प्रकाशित करती है।

[सं. एल – 39025/01/2024-आईआर (बी- II)-49]

सलोनी, उप निदेशक

New Delhi, the 28th January, 2025

S.O. 180.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (**Ref. 03/2015**) of the **Central Government Industrial Tribunal-cum-Labour Court Kolkata** as shown in the Annexure, in the industrial dispute between the management of **Allahabad Bank of India** and **Shri Sanjay Sengupta**.

[No. L-39025/01/2024-IR(B-II)-49]

SALONI, Dy. Director

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT KOLKATA

Present : Justice K. D. Bhutia, Presiding Officer.

CGIT-03 OF 2015

Shri Sanjay Sengupta Applicant/Employee

Versus

Allahabad Bank of India ... Opp. Parties

Appearance :

On behalf of the Appellant: Mr. Kausik Pradhan, Advocate

On behalf of Opp.Party : Absent.

Date: 26th July, 2023.

AWARD

This application under section 2A(2) of the Industrial Dispute Act, 1947 filed by Sri Sanjay Sengupta against the authorities of the management of Allahabad Bank claiming reinstatement with back wages after declaration his retrenchment on 30-04-2013 to be illegal, void abinitio.

It is the case of the applicant that he was engaged as a casual employee by Allahabad Bank of India, Harish Mukherjee Road Branch on 23rd November, 1999. That he was made to work as a Peon on regular basis of Allahabad Bank without any break. That he rendered his continuous service for more than 240 days in a calendar year. He discharged his duty sincerely and diligently with a hope and legitimate expectation that his engagement will be

regularised before he exceeds the age limit for regular employment as a permanent staff of the bank. But all on a sudden he was refrained from discharging his service as a casual Peon w.e.f. 30-04-2013. He alleged that his service has been terminated or he was retrenched without following the procedure laid down in section 25-F of the I.D. Act.

That on such termination of his service he moved the Hon'ble High Court and filed Writ Petition No. W.P. 4634 (W) of 2014. The said writ petition was disposed of directing the bank to consider the representation made by him, but the authority of the bank rejected his representation. He, therefore, filed a complaint before the Regional Labour Commissioner (Central), Calcutta in the year 2015, who could not settle the matter. Thus he has to file the present application under section 2A(2) of the I.D. Act.

The bank has contested such claim of the applicant by filing written objection and where it has been alleged that the applicant Sri Sanjay Sengupta was never appointed by the bank at its Harish Mukherjee Road Branch, Kolkata as a Gr.-D staff. Therefore, the question of termination of his service by the bank does not arise.

That there exists no relationship of employer and employee between it and the concerned applicant. The applicant by filing writ petition before the Hon'ble High Court, representation before the bank authority, raising industrial dispute before the Labour Commissioner has adopted a procedure to get himself employed in the bank through back door or by hook or crook without facing the recruitment process. Therefore, the bank has prayed for dismissal of the application. Ultimately, the bank failed to pursue the case after cross examining the applicant.

The applicant in order to prove his case has examined himself as W.W. No.1. He also examined one Sri Amal Nath, a person having an account with the Allahabad Bank, Harish Mukherjee Road Branch as W.W. No.2. The bank pass book of W.W. No.2 has been marked as Exhibit- W/1. No document whatsoever has been filed by the applicant to substantiate his claim and case as made out in his application under section 2A(2) of the I.D. Act.

That in order to raise an industrial dispute the applicant has to prove that there exists a relationship of employer and employee between him and Allahabad Bank. But, no iota of documentary evidence has come on record to prove that the applicant Sri Sanjay Sengupta was employed by Allahabad Bank, Harish Mukherjee Road Branch to work as casual Gr. D. Peon in the year 1999 and he continuously worked till 30-04-2013. He has failed to examine a single staff of the bank of Harish Mukherjee Road Branch, to prove indeed he used to work as a casual Peon in the bank.

The applicant during cross examination by the bank has stated that he was unemployed and he used to visit the bank. One day he was called by the Sr. Manager Mr. Asit Chakraborty and told him that he would give him employment. That without giving any appointment letter by the bank, he was engaged to work as a casual Gr.D. Peon. That he was paid Rs.510/- per week through vouchers issued in the name of permanent employee of the bank and after withdrawal payment used to be made to him by the said bank employee. That he was directed by the Sr. Manager of the bank to work so he believed that he was a workman of Allahabad Bank. That while he was discharging his duty as a casual Peon of the bank, he was authorised in writing by the Manager to collect LIC policies of bank customers.

Unfortunately, his evidence is totally silent about the names of those bank staff in whose names the cash vouchers used to be prepared for making payment to him. He has also failed to produce the copy of those authorised letters issued by the Manager, Allahabad Bank, authorising him to collect LIC policies on behalf of the bank customers. He has stated that Branch Manager Mr. Mrityunjay Singh refused to give him appointment letter.

It is very interesting to note that he tried to prove that he was an employee of the bank through W.W. No.2 Sri Amal Nath, a customer of Allahabad Bank having S.B. A/c. No. 20790396080 and who in his evidence has stated that whenever he used to visit the bank he had seen the applicant working in the bank. That the applicant used to update his Pass Book and renewed his F.D. certificates. That he had seen the applicant Sri Sanjay Sengupta working in the bank since 1999 to 2002. This Tribunal is afraid to accept evidence of such got-up witness produced by the applicant only for the purpose of this case. Had the applicant been employed by the bank as a casual workman then the best witnesses to prove his employment would have been the bank official/staff or the representative of the trade union of the bank and not a customer. But in the present case the concerned workman has failed to produce such reliable and trustworthy witnesses. Therefore, in the absence of any iota of documentary evidence to prove employment of the applicant as a casual Peon in Allahabad Bank, Harish Mukherjee Road Branch and in absence of reliable and trustworthy witness to prove his employment this Tribunal is unable to accept his case, his oral testimony and as well that of his got up witness.

Further his evidence in cross makes his case a doubtful as he has stated that he was unemployed and he used to visit the bank and one fine day Mr. Asit Chakraborty, Sr. Manager told him whether he wants to work in the bank or not and when he gave answer in affirmation he was engaged by Sri Asit Chakraborty as a casual Peon of the bank. It is true the bank can engage casual daily rated workman to do casual nature of works but the Bank Manager has no authority to give employment to any person against a sanctioned vacant post without following the recruitment rules and regulations to which the bank is governed. Further, the eligible candidates have to undergo the selection process by appearing in written examination, interview and medical test provided the candidate has requisite educational qualification and other qualification for the post.

Considering the facts and circumstances of the case, the evidence of the witness it appears to this Tribunal the applicant very cleverly by filing writ petition before the Hon'ble High Court, representation before the bank authority, raising industrial disputer before the Labour Commissioner and by filing the present application under section 2A(2) of the I.D. Act, has set up a false case of employment as a casual Peon in Allahabad Bank, Harish Mukherjee Road Branch, Calcutta and a false allegation of retrenchment just to get an employment in the bank. Therefore, the case as made out by the applicant appears to be frivolous and baseless.

Accordingly, the present case under section 2A(2) of the I.D. Act filed by the applicant filed for reinstatement with back wages is dismissed. Consequently, CGIT-03 of 2015 is disposed of and award of dismissal is passed.

Justice K.D.BHUTIA, Presiding Officer

नई दिल्ली, 10 फरवरी, 2025

का.आ. 181.—औद्योगिक विवाद अधिनियम (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार अविवा लाइफ इन्सुरेंस कंपनी इंडिया लिमिटेड के प्रबंधन के संबंध में नियोजकों और श्री अजेश कुमार टंडन के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-1, चंडीगढ़, पंचाट (रिफरेंस नं.- 34/2015) को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 10.02.2025 को प्राप्त हुआ था।

[सं. एल – 17012/5/2016-आईआर (एम)]

दिलीप कुमार, अवर सचिव

New Delhi, the 10th February, 2025

S.O. 181.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (**Reference No. 34/2015**) of the **Central Government Industrial Tribunal cum Labour Court-1, Chandigarh** as shown in the Annexure, in the Industrial dispute between the employers in relation to **Aviva Life Insurance Company India Limited** and **Sri Ajesh Kumar Tandon** which was received along with soft copy of the award by the Central Government on 10.02.2025.

[No. L-17012/5/2016-IR (M)]

DILIP KUMAR, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-I, CHANDIGARH.

Presiding Officer: Sh. Brajesh Kumar Gautam.

ID No. 34/2015

Registered on 25.02.2016

Ajesh Kumar Tandon S/o Sh. Om Parkash Tandon R/o #1427, Urban Estate, Phase II, Jalandhar City-144022.

.....Workman

Versus

1. The Managing Director & CEO, Aviva Life Insurance Company India Ltd, Aviva Tower Sector Road, Opp. Golf Course, DLF Phase-V, Sector 43, Gurgaon (Haryana)-122003.
2. Director-Direct Sales Force, Aviva Life Insurance Company India Ltd, Aviva Tower Sector Road, Golf Course, DLF Phase-V, Sector 43, Gurgaon (Haryana)-122003.
3. Cluster Manager DSF, Aviva Life Insurance Company India Ltd, F 2nd Floor, SCO 45-46-47, Sector 17-A, Chandigarh-160017.

.....Respondents

Sh. Ajesh Kumar Tandon (Workman in Person)

Sh. Prateek Narang (Manager Legal) for Respondent No.1 to 3

Judgment reserved on 8th January, 2025

Judgment Pronounced on 23rd January, 2025

JUDGMENT/ AWARD

1. Present industrial dispute case traces its root to Central Government Ministry of Labour and Employment Reference vide Notification No. L-17012/5/2016-IR(M) dated 15.02.2016/ 17.02.2016, under clause (d) of Sub-Section (1) sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) (hereinafter called the Act), which was sent for adjudication to this Tribunal, reads as :-

“Whether the action of the management of AVIVA Life Insurance Company India Limited in terminating the services of workman Shri Ajesh Kumar Tendon S/o Om Parkash Tandon w.e.f. 07.10.2009 is legal, fair and justified? If not, what relief the workman is entitled to and from which date?”

2. After receiving the said reference notices were issued to the parties, whereupon workmen Ajesh Kumar Tandon appeared in person and filed his claim statement on 22.03.2016.

3. **The case of Workman/ Petitioner-** the brief facts of the case as unfolded from the claim statements are that the workman was employed with the respondent company since 10th July, 2006 on the post of Sales Manager. As per appointment letter dated 26.06.2006, the claimant-workman was assigned role of achieving and exceeding sales targets and managing financial planning and also was required to perform such tasks which were not directly associated with Job Title. The respondent company was to review role and responsibilities of the claimant from time to time. The further case of workman has been that he was a whole time employee of the respondent company and his operational area was restricted to Jalandhar, however, as per employment condition the workmen was liable to be transferred anywhere. It is stated by the workman that during the employment tenure he rendered his services to the best of his ability and full satisfaction to his superiors. In the end of December, 2008 sales performance was judged as the highest. It is alleged that reporting officer of the workman Mr. Vikram Bali the Branch Manager of Jalandhar Branch became inimical for unknown reasons and he scuttled promotion of the workman based on his extra ordinary performance in the company. It is further stated in the claim petition that said Mr. Vikram Bali issued a show cause notice on a trivial matter which was duly replied by the claimant-workman and no action was taken but monthly reimbursement claim was not paid to him. The claimant represented against the vindictive and prejudicial attitude of the Branch Manager but no action was taken by the Cluster Manager of the company. It is further alleged in the claim petition that without giving any opportunity of hearing, without serving of any show cause notice or charge sheet and without holding any in house enquiry, the management of the company terminated the services of workman-claimant in an illegal, arbitrary and malafide manner vide letter dated 07.10.2009. Those persons who were Junior to the claimant have been retained in employment and other person has also been employed in place of claimant-workman. Against the termination order the claimant-workman had moved a demand notice dated 27.01.2010 before the Labour-cum-Conciliation Officer, Circle-II, Jalandhar whereupon the matter was referred to Industrial Tribunal, Jalandhar for adjudication by Government of Punjab. In the said proceeding question of jurisdiction was raised by the management and Industrial Tribunal, Jalandhar vide order dated 14.11.2014 came to the conclusion that it lacks the jurisdiction to decide the dispute as appropriate Government is the Central Government and not the State of Punjab Government. The claimant thereafter, approached Assistant Labour Commissioner-cum-Labour-cum-Conciliation Officer, Jalandhar and the matter was thereafter, referred for an adjudication before this Tribunal as referred hereinabove. Prayer has been made that termination order be set aside and respondents be directed to reinstate the workman in service along with all consequential benefits with full back wages.

4. **The case of Management-**In response to notices issued, Respondent No.1 to 3 appeared and filed written statement/ reply to the claim petition of workman. According to the case of Management the instant claim petition is false, malicious, incorrect and malafide. The employment of the claimant with the respondent company was strictly governed by the (Appointment Letter) and does not fall under the purview of Industrial Disputes Act. The claimant admittedly worked on the managerial position and as such does not fall under the definition of the ‘Workman’ under Section 2(s) of ID Act. The claim filed by the petitioner does not fall under the definition of the ‘Industrial Dispute’ as defined in section- 2 (k) of ID Act. The primary duties of sale managers are appointment of the agents, training and monitoring their works and thus, the dominant nature of the duties of the Sales Managers is not manual, unskilled, skilled, technical operational or clerical, therefore the claimant would not be workman as defined under Section 2(s) of ID Act. Sh. Ajesh Kumar Tandon was appointed as Sales Manager (SM) vide appointment letter dated 26.06.2006 wherein the place of work allocated was Jalandhar and the claimant was required to report the Deputy Branch Manager-Ludhiana-Direct Sales force of the answering respondent company. It is submitted that as per clause 13 of the Appointment Letter the company had right to terminate the services of the claimant by giving one month salary. As per the job description of the Sale Manager, his role primarily comprises the advisors sales team to achieve desired sale objectives and the main priorities includes achieving sale targets as per budgets, development of professional standards in the advisor’s team and review of Sale efforts of the advisor Team. At the time of joining each of the Sales Managers also signs on a commitment to achieve a minimum business targets and performance is evaluated on the annual basis. According to the further case of management the claimant was not achieving his targets and as a process he was put on capability period of 1 month by the company from 13.04.2009 to 13.05.2009. Capability process is a guide for supervisors and Managers to assist the employees who are not able to meet the expected job performances standard and it is an opportunity provided to the employees to improve his performance. During his

capability the claimant was given a target of collecting premium of 7,00,000/- to be achieved but the claimant could only collect premiums of Rs.1.16 lacs. It is admitted by the answering respondent that the company as per Clause 13(a) of the Appointment Letter dated 26.06.2006, terminated the services by paying one month salary and the one month salary which was credited to the account of the claimant on 30.10.2009. While replying para wise contention of the claimant/petitioner, the contesting management has admitted the facts of appointment, area and place of service, but it is denied that the petitioner had no authority to bind the company and that he was not employed in any administrative managerial or supervisory work. It is stated by the management that the performance of petitioner was not up to mark and he was not achieving his targets inspite of his understanding capability process to guide supervisors and managers to assist the employees who were not able to meet the expected job performance standard. It is denied that the sale performance of the petitioner was judged to be highest by the end of December 2008. It is also denied that Mr. Vikram Bali Branch Manager became inimical to the petitioner and managed to scuttle the promotion of the claimant. The management has denied the contents of para 5, 6, 7, and 8 of the claim petition. According to the management provisions of the ID Act do not apply in the case of petitioner therefore there is no question of payment of retrenchment or compensation. There is no cause of action against the management and the petition is liable to be dismissed.

5. **Issues-** Vide order dated- 13-08-2018 following issues were framed based on the pleadings of the parties-

- (1) Whether the reference is not legally maintainable in view of the preliminary objections?
- (2) In terms of reference.
- (3) Relief.

6. **Evidence-** During hearing proceedings of this reference, on behalf of the petitioner evidence by way of affidavit of Ajesh Kumar Tandon was filed on 27-11-2018. Several documents were also tendered by the deponent-the petitioner which were numbered as W/1-1 Offer of Appointment, W/1-2 Agency Agreement, W/1-3 Letter dt. December 31, 2006 by Director to Ajesh Kumar Tandon, W/1-4 Show cause notice, W/1-5 Performance enhancement Program, W/1-6 Termination Letter dt. October 7, 2009, and W/1-7 Statement of Petitioner. It may be noticed that several opportunity for cross examination of the petitioner was given to the management and ultimately opportunity was closed. However by the order of Hon'ble High Court passed in the CWP no. 7040-2024 the management was permitted to cross examine the petitioner in this case. It is to be further noted here that petitioner claimant has also submitted certain documents as additional evidence which have been taken on the record and are marked as Ex W/1-8 copy of FPA selection colly page containing 6 pages, Ex.W/1-9 Colly pages 1-80 i.e. copy of several e-mails and certain letters.

7. On behalf of the management also evidence by way of affidavit of Thejas Babu a Senior Manager HR in the respondent company has been filed on 18-06-2024 and some documents have been tendered as documentary evidence which are marked as Exhibit R-1 Authority Letter dt 13 May 2014, Exhibit R-2 is copy of employment application form, Exhibit R-3 copy of vitae of claimant/petitioner, Exhibit R-4 copy of offer letter dt 26-06-2006 as accepted by claimant petitioner on 29-06-2006, Exhibit R-5 copy of agreement and interview evaluation conducted by the claimant petitioner, Exhibit R-6 copy of PEP Form, Exhibit R-7 copy of termination letter dt 07.10.2009 and Exhibit R-8 copy of F& F sheet.

8. **Submissions/ argument on behalf of Workman-Petitioner:** The workman-petitioner appeared in person during the entire proceeding and he also argued his case. He submitted that his termination letter shows that it has been issued as per Clause 13 (a) of the Appointment Letter dated 26.06.2006 which is not applicable in the petitioner's case. According to him his termination is infact has been done under Clause 13-B as the work performance was not found satisfactorily by the Management and also there has been allegation of misconduct and negligence against him. According to the petitioner a PEP (Performance Enhancement Program) was scheduled from 08.10.2009 to 09.10.2009 and he was intimated about this program but just before the day of commencement of this program a termination letter dated 07.10.2009 was issued and remarkably that very later has been got received to the petitioner even a day before i.e. on 06.10.2009. There was no requirement by the intimation letter of PEP Program to acknowledge or intimate regarding taking part in the said program but stand of company has been that petitioner refused to participate the petitioner raise a question if he was terminated a day earlier how he can refused to participate in the said ground. It is also argued by workman-petitioner that a show cause notice dated 10.06.2009 was also issued to him making allegation therein about transgression in claiming local convenience on an election holiday i.e. 13.05.2009. It is argued that although convenience allowance for that day was raised but no payment was made for that declared holiday. A detailed reply against said show cause notice was also submitted by petitioner and no any further action was taken. The workman/ petitioner has further argued that the stand of company about performance not being satisfactory is concerned infact his performance was good in comparison to others as he was placed at 3rd Rank in the Target Achievement Chart and it can't be said that performance was not satisfactory. The petitioner has also argued that he was shown taking interview and filing format for engaging agents but infact his signature were forged on those documents which management treated as evidence against the petitioner. It is vehemently argued that no in house enquiry was ever held before termination of the services and therefore, the Act on part of management in terminating service is Arbitrary, illegal and same is in violation of established service law. The petitioner has also

argued that a preliminary objection has been raised by management regarding the reference not maintainable as the petitioner is not covered under the definition of workman. In this regard it is submitted by the petitioner that the designation is only a glorified title but the nature of work remained clerical and operational and therefore petitioner is well within the definition of workman. It has been also pointed out that during the cross examination the petitioner has confirmed that he possessed no specialized skills and his salary was determined in accordance with the terms of his appointment. The workman has relied on certain decisions of Punjab & Haryana High Court in the case of *Ripudaman Bhanot Vs Presiding Officer of Labour Court, Ludhiana* and submitted that the Hon'ble Court had held by interpreting definition of workman given under Section 2(s) of the ID Act that the provisions of Industrial Dispute Act is applicable to sales promotion employees. It is argued that there is no proof on record that nature of duties of Development Officer of LIC and that of Workman-Petitioner is similar. The petitioner further contended that he was not engaged with any duty of supervisory or administrative nature. He also relied on a decision of Supreme Court rendered in *S.K. Verma Versus Mahesh Chander & Anr. AIR 1984 SC 1462*, *Devinder Singh Versus Municipal Council (2011) 6 SCC 584*, *LKP Merchant Financing Ltd. V. Govt of NCT & Ors. (2003)*, *John Joseph Khokar V. Bhadange B.S. & Ors [1998 (1) LLJ 447 (Bom)]*, *Burmah Shell Oil Storage & Distributing Co. V. Burmah Shell Management Staff Assn. (AIR 1971 Sh. S.C. Gupta 922)*, *MIRC Electronics Ltd. V. Shashank Gupta (Delhi High Court 2023)*, *Delta Jute & Industries Ltd. Staff Assn. V. State of West Bengal [2015(145) FLR 105]*, *The Workmen V. Greaves Cotton & Co. Ltd. [1972 SCR 1373]*, *Chandrasekhara Sharma V. C. Krishnaiah Chetty Jewellers Pvt. Ltd. [2012 (4) Kar LJ 279]*, *Delhi Consumer Cooperative Wholesale Store Ltd. V. S.L Thakural (Delhi High Court)*, *Gobind V. Presiding Officer, Labour Court & Anr. (2012 ILR 2 Punjab and Haryana 637)*.

9. **Submissions/ argument on behalf of Management:** Ld. Counsel appearing on behalf of management has submitted that at the time of joining the Post of Sales Manager the salary of claimant-petitioner was more than Rs.10,000/- per month which is the maximum limit for a person to be covered under the term workman. It is further argued that respondent-company is a Private Company and terms and condition of the Private Company for employment is as per agreement between company and the employee. The petitioner has been legally terminated as per terms and conditions of the appointment. The Ld. Counsel has relied his argument on reported decisions- *Burmah Shell Oil Storage and Distribution Company Versus Burmah Shell Management, Chauhariya Tripathi & Ors. Versus LIC of India MANU/SC/0305/2015*, *Lenin Kumar Ray Versus M/s Express Publication decided on 21.10.2024 MANU/SC/1131/2024*, *Pear Lite Liners Pvt. Ltd. Versus Manorma Sirsi (2004)3 SCC 172*, *Shri Satya Narain Garg through his legal heirs Versus DCM Limited and Ors. In AIR No.566/2002 decided on 05.12.2011 by Delhi High Court*, another Delhi High Court Decision in *Sh. Naresh Kumar Versus Sh. Hiroshi Maniwa & Ors. CLAIM STATEMENT (OS) No.393/2010 decided on 05.11.2015*.

10. **Finding:** Points No.(i)-Whether the reference is not legally maintainable in view of the preliminary objections? In the written statement filed on behalf of respondent-management a preliminary objection regarding the maintainability of present Industrial Dispute arising out of reference has been raised and during the argument the Ld. Counsel for respondent has raised this point with a force and therefore, it becomes imperative for this Court to first decide this issue as to the maintainability of present reference. According to the Ld. Counsel for the respondent management the appointment of the claimant petitioner is strictly governed by the appointment letter and does not fall under the purview of Industrial Dispute Act. The claimant petitioner has worked on the managerial position and as such he cannot be covered under the definition of workman under Section 2 (s) of Industrial Dispute Act. The Ld. Counsel for respondent in support of his contention has referred several decisions of Hon'ble Supreme Court & High Court as referred hereinabove- *Sonipat Co-operative Sugar Mills Ltd. Versus Ajit Singh 2005(3) SCC 232*. The Ld. Counsel has further submitted that primary duties of sales managers are appointment of agents training and monitoring their works and therefore, the petitioner claimant cannot be said to be a workman as defined under Section 2(s). Against this preliminary objection the claimant petitioner (in person) has pointed out that only because name of designation a person cannot be treated as non-workman. He also has referred several cases during his argument which are referred hereinabove. Section 2 (s) of the Industrial Dispute Act defines 'workman' as-

2(s) 'Workman'- means any person (including an apprentice) employed in any Industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be expressed or implied and for the purposes of any proceeding under this Act in relation to an Industrial Dispute includes any such person who has been dismissed, discharged or retrenched in connection with or as consequence of that dispute or whose dismissal, discharge or retrenchment has laid to that dispute but does not include any such person-

(i)... (Not applicable in present case).

(ii)... (Not applicable in present case).

(iii) Who is employed mainly in a managerial or administrative capacity or

(iv) Who being employed in a supervisory capacity draws wages exceeding Ten Thousand Rupees per mensem or exercises either by the nature of duties attached to the office or by reason of powers vested in him, functions mainly of a managerial nature.

From above said definition of workman it reflects that job of person employed in Industry may be manual, unskilled, skilled, technical, operational, clerical or supervisory but if a person is employed in a Managerial or administrative capacity or employed in Supervisory Capacity and draws wage exceeding Ten Thousand Rupees per month is not included in the definition of workman. In the reported decision *Sonipat Co-operate Sugar Mills Ltd. Versus Ajit Singh (2005) 3 SCC 232* it has been held that a bare perusal of above mentioned provision clearly indicates that a person could come within the purview of said definition if he (i) is employed in any industry (ii) performs any manual, unskilled, skilled, technical, clerical, operational and supervisory work. In the present case the appointment letter issued by respondent management indicates that claimant petitioner was appointed on the position of Sales Manager. The role assigned as per appointment letter has been responsibility for achieving and exceeding sales targets and managing Financial Planning Advisors reporting to the claimant-petitioner. This nature of assigned role indicates that the claimant petitioner was in fact doing a job of supervisory nature as financial planning advisors were supposed to report him and he was supposed to achieve and exceed the sale targets. As per the definition of workman in Industrial Disputes Act has quoted above the supervisory work is also one of the nature of job given therein but the rider in the Section itself has been that if a person is employer in a supervisory capacity his wages should not exceed 'Ten Thousand Rupees' per month. This 'Ten Thousand rupees' per month has been inserted by amendment in year 2010 and before amendment it was 'One Thousand Six Hundred Rupees'. Now it is to be seen as to what was the wages of the claimant petitioner at the time of his appointment with respondent. As per the appointment letter issued on 26.06.2006 his annual remuneration package was fixed as Rupees Three Lacs Seventy Five Thousand. This amount was including basic salary, taxable and non-taxable allowances and benefits and other payments payable as per the Designated Acts. In the said appointment letter a breakup to this annual remuneration package has been given vide Annexure-A which further shows that the basic component has been Rs.1,68,750/-, Provident Fund Contribution by Employer 12% of basic salary per month and Gratuity of Rs.8,113/- for every completed year of service, in addition to these the further flexible compensation were also there which included house rent allowances medical reimbursement, leave travel allowance and special allowance. If we consider the basic salary component which is mentioned in the detailed description of the fixed remuneration as Rs.1,68,750/- the wage is certainly exceeded Rs.1,600/- rupees which was the upper limit at the time of appointment of claimant petitioner. In other words in the year 2006 when claimant petitioner was given appointment as Sales Manager he was drawing his basic salary more than one thousand six hundred rupees per month and therefore he cannot be covered under the definition of workman given in Section 2(s) of the ID Act. In the reported decision of Supreme Court of India *Chauhariya Tripathi & Ors. Versus LIC of India & Ors.* the Hon'ble Supreme Court referring to several decisions has upheld the decisions of Hon'ble High Court whereby award passed by Central Government Industrial Tribunal-cum-Labour Court, Kanpur (Tribunal) was overturned on the sole ground that the persons on whose instance a reference was made under Section 10(1) and 2(a) of the ID Act was not adjudicable by the Tribunal for the reason that aggrieved persons were working as Development Officers in the Life Insurance Corporation and they cannot be treated as workman under the Industrial Dispute Act, and the Labour Court has no jurisdiction to deal with the matter. In another reported decision *Burmah Shell Oil Storage & Distribution Company of India Ltd. Versus Burmah Shell Management Staff & Ors (1970) 3 SCC 378*, it has been held that the work of canvassing and promotion shells cannot be included in any of the four classifications given in the definition of workman in the Industrial Dispute Act. In reported decision *T.P. Srivastava Versus National Tobacco Company of India Ltd. AIR 1991 SC 2294* it has been held that duties involved suggesting of wage and means to improve the sales require the imaginative and creative mind which could not be termed as either manual, skilled, unskilled, technical and clerical in nature and such persons being a Section Salesman cannot be covered under definition of workman. The claimant workman has cited some decisions in his favor as *S.K. Verma Versus Mahesh Chander & Anr, AIR 1984 Supreme Court 1462* wherein Development Officers were held covered under the terms 'workman' but this decision has been held *per incuriam* in *Chauhariya Tripathi & Ors.* referred hereinabove. In the evidence adduced by claimant petitioner he himself has stated that he was a whole time employee of respondent company and his operations were restricted to a definite area that is Jalandhar being the Head Quarter. As per employment conditions the claimant was also liable to be transferred. As per claimant himself, in his affidavit of evidence principal duty was to organize and develop the business of company in the area allotted to him and for that purpose to find active and reliable agents (Financial Planning Advisors). In further evidence the claimant petitioner has stated that he was supposed to support these agents (Financial Planning Advisors) to canvass new business and to render effective after sales service to policy holder. Although the claimant has deposed in his evidence that he was not employed in any administrative, managerial or supervisory work but finding active and reliable agents and to support them to canvass new business itself is a supervisory Act. In addition to it the appointment letter itself in no unclear terms states that responsibility of claimant petitioner was to achieve and exceed sales targets. Certainly the nature of job and the duty given to claimant petitioner was that of supervisory nature and a person employed in a supervisory capacity if is drawing wages exceeding one thousand six hundred rupees in the year 2006 when the petitioner claimant was given appointment, he is excluded from the definition of workman under Section 2(s) of the Industrial Dispute Act.

11. In the light of discussion made hereinabove and in the facts and circumstances of the present case, it is held that claimant-petitioner Sh. Ajesh Kumar Tandon is not covered under the definition of 'Workman' as given in Section 2(s) of the Industrial Dispute Act and whose instance the Reference vide Notification No. L-17012/5/2016-IR(M) dated 15.02.2016 / 17.02.2016 sent to this Tribunal under Section 10 (1) (d) and (2A) of the Industrial Dispute

Act, 1947 is not legally maintainable in view of the preliminary objections raised by the Respondent Management. Since the reference itself is held not maintainable, this Court has no jurisdiction to deal with the *lis* in question and record any finding and adjudicate the same as to whether the termination of claimant-petitioner Sh. Ajesh Kumar Tandon w.e.f. 07.10.2009 is legal, fair and justified?

12. It is therefore,

ORDERED

That the present ID No.34/2015 titled as Ajesh Kumar Tandon Vs Aviva Life Insurance Company & Ors registered on the basis of Reference vide Notification No. L-17012/5/2016-IR(M) dated 15.02.2016 / 17.02.2016 is dismissed.

13. Let copy of this Judgment be sent to the Appropriate Government as required under Section 17 of the Act for publication.

Dated: 23.01.2025

B.K. GAUTAM, Presiding Officer

नई दिल्ली, 10 फरवरी, 2025

का.आ. 182.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मेसर्स एसएमएम इंजीनियरिंग सर्विसेज; मिश्रा धातु निगम लिमिटेड के प्रबंधन के संबद्ध नियोजकों और श्री एस. मधुसुधन राव के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, हैदराबाद, पंचाट (रिफरेन्स नं.- 35/2024) को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 10.02.2025 को प्राप्त हुआ था।

[सं. जेड-16025/04/2025-आईआर (एम)-5]

दिलीप कुमार, अवर सचिव

New Delhi, the 10th February, 2025

S.O. 182.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Reference No. 35/2024) of the **Central Government Industrial Tribunal cum Labour Court, Hyderabad** as shown in the Annexure, in the Industrial dispute between the employers in relation to **M/s SMM Engineering Services; Mishra Dhatu Nigam Limited** and **Sri S Madhusudhan Rao** which was received along with soft copy of the award by the Central Government on 10.02.2025.

[No. Z-16025/04/2025-IR(M)-5]

DILIP KUMAR, Under Secy.

ANNEXURE

**IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT AT
HYDERABAD**

Present: - **Sri IRFAN QAMAR**

Presiding Officer

Dated the 29th day of October, 2024

INDUSTRIAL DISPUTE No. 35/2024

Between:

Sri S Madhusudhan Rao,

H.No.1-7-510/5, Hari Nagar,

Ramnagar, Hyderabad-500048.

.....

Petitioner

AND

1. M/s SMM Engineering Services,
5-112, Shivaji Nagar, Meerpet,
Balapur, Rangareddy-500097.
2. The General Manager, HR.
Mishra Dhatu Nigam Limited,
Presiding Officer Kanchanbagh,
Telangana-500058.

...Respondents

Appearances:

For the Petitioner : None

For the Respondent: Smt. V. Uma Devi & N. Srinivas & Kiran Kumar, Advocate of R2

AWARD

The Government of India, Ministry of Labour by its order No.8/23/2024-B1 dated 10.07.2024 referred the following dispute under section 10(1)(d) of the I.D. Act, 1947 for adjudication to this Tribunal between the management of M/s SMM Engineering Services & Mishra Dhatu Nigam Limited, and their workmen. The reference is,

SCHEDULE

“Whether the action of the contractor M/s SMM Engineering Services, Rangareddy in termination of services of Sri S.Madhusudhan Rao in the establishment of Mishra Dhatu Nigam Limited, Hyderabad is justified? If not, what relief Sri S.Madhusudhan Rao is entitled to?”

The reference is numbered in this Tribunal as I.D. No 35/2024 and notices were issued to the parties concerned.

2. Petitioner absent. Record shows that, on previous date, notice issued to petitioner returned with endorsement “addresses left” without intimation and no other address of the petitioner is available. Today also petitioner not present not filed claim statement. In view of absence of petitioner and non-filing of Claim statement, ‘No-Claim’ award is passed.

Award is passed accordingly. Transmit.

Typed to my dictation by Shri Vinay Panghal, LDC corrected and signed by me on this the 29th day of October, 2024.

IRFAN QAMAR, Presiding Officer

Appendix of evidence

Witnesses examined for the

Witnesses examined for the

Petitioner

Respondent

NIL

NIL

Documents marked for the Petitioner

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 10 फरवरी, 2025

का.आ. 183.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार केयर हेल्थ इन्सुरेंस लिमिटेड, रेलिगरे हेल्थ इन्सुरेंस कंपनी लिमिटेड के प्रबंधन के संबद्ध नियोजकों और

श्री अखिलेश दुबे के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, हैदराबाद, पंचाट (रिफरेन्स न.- सीजीआईटी/एलटी/-आरसी/14/2022) को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 10.02.2025 को प्राप्त हुआ था।

[सं. जेड-16025/04/2025-आईआर (एम)-6]

दिलीप कुमार, अवर सचिव

New Delhi, the 10th February, 2025

S.O. 183.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (**Reference No. CGIT/LC-RC/14/2022**) of the **Central Government Industrial Tribunal cum Labour Court, Jabalpur** as shown in the Annexure, in the Industrial dispute between the employers in relation to **Care Health Insurance Limited, Religare Health Insurance Company Limited and Sri Akhilesh Dubey** which was received along with soft copy of the award by the Central Government on 10.02.2025.

[No. Z-16025/04/2025-IR(M)-6]

DILIP KUMAR, Under Secy.

ANNEXURE

THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, JABALPUR

No. CGIT/LC/RC/14/2022

Present: P.K.Srivastava

H.J.S..(Retd)

AkhileshDubey, S/o Shriram Sharma,
R/o Care of Shankar Singh Parihar,
South of Kendra Vidhyalay, Ward -10,
Sidhi (M.P.)

Workman

Vs

1. **The Care Health Insurance Limited**
(Formerly known as Religare Health Insurance Company Limited) through
Its Managing Director, 5th Floor, 19
Chawla House, Nehru Place, New Delhi
2. **Care Health Insurance Limited**
Through its HR Head, 5th Floor, 19
Chawla House, Nehru Place, New Delhi
3. **Care Health Insurance Limited**
Through its Territory Head, Sidhi, M.P.

Management

(JUDGMENT)

(Passed on this 10th day of January-2025)

The Workman has filed petition under Section 2(A) (2 & 3) of the **Industrial Disputes Act 1949 (in short the Act)**, against termination of his services by the Management with a case that, he had joined the Management as Senior Area Manager-Digi-Connect on 13.02.2020 at an Annual Package of **Rs. 5,25,000/-**. His Monthly Salary was

around Rs. **39,958/-**, Gross Salary around Rs. 44,819/- and Net Salary around Rs**42,239/-** as per last pay slip of July 21, 2021. He had been working with honesty, sincerity and dedication and was appreciated by his seniors in **May 2020, June 2020, and July 2020** for his out-standing performance and was ranked among the Top- 30 Area Managers in February 2021 and April 2021 as well Top Second in May and June 2021 for achieving maximum targets. On July 16, 2021 he received a communication from HR Department of Company informing him that his performance was below average and was required to improve his work to meet Minimum Performance Benchmark of MTD 50% by 15 August, 2021. On 19.08.2021, he received a call from HR Manager, asking him to resign with immediate effect without any show-cause notice or prior intimation as mentioned in the terms and conditions in his appointment letter. On 20.08.2021, he received letter from Management, wherein he was informed that his performance was weak and to his surprise, he received the order of termination on 23/08/2021 invoking the Clauses 18 and 19(J) in the Appointment Letter by the Management, stating that this order was with reference to show-cause notice dated 20.08.2021 whereas the Communication dated 20.08.2021 did not required him to show-cause. He raised a dispute with the Assistant Labour Commissioner Central, Shahdol in this respect which cannot be conciliated within 45 days, hence this petition. According to the Petitioner, the action of Management in terminating his services is un-just, illegal and arbitrary without following the principles of Natural Justice and in contribution to terms and conditions mentioned in his Appointment Letter dated 13.02.2020. He has thus prayed that, setting aside the order of Management terminating him from services dated 23.08.2021. He be reinstated with all back-wages and benefits and be deemed in continuous service of Management.

In its written statement to the petition, the Management has taken a case that due to his non-performance, a Performance Improvement Plan was communicated to the petitioner vide letter dated 16.07.2021, wherein he was asked to seek necessary guidance and inputs from his superiors and was excepted to meet the minimum performance benchmark by 15 August, 2021. On 20.08.2021, he was issued a show-cause notice informing him that his performance during the Performance Improvement Plan (PIP) period has been a concern for the Management. Thereafter, due to his consequent non-performance, his appointment was terminated by cancelling the contract of Appointment on 23.08.2021 under Clause 18 and 19(J) of his Appointment Letter. According to Management, the action of Management in terminating him from his services is just illegal. In evidence, the petitioner has filed and proved photocopy of his letter by appointment, pay slip for July 2021, List of 30 top Area Managers, Letter of Management dated 16.07.2021, which are Exhibit W-1 to W-5 he has filed his affidavit as his examination-in-chief. Management has cross-examined him on his affidavit.

Management has filed and proved Letter of Appointment, Letter of Management dated 16.07.2021 and 20.08.2021, Letter of Termination dated 23.08.2021, Exhibit M-1 to M-4. Management has also filed affidavit of its Witness as his examination-in-chief, who has been cross-examined by the Workman.

I have heard argument of Learned Counsel Mr. Nitin Agrawal for the petitioner and Mr. K.B. Singh for Management. I have gone through the record as well.

The first argument of Learned Counsel for Management is that the petitioner is not a Workman as defined under Section 2(s) of the Act and **secondly**, there is no illegality committed by Management in terminating services of petitioner in the light of his appointment contract.

Learned Counsel for Petitioner has replied the **First** argument on the ground that it is nowhere pleaded nor is proved by Management that the petitioner is not a Workman as defined under the Act. And **Secondly**, from the evidence on record which is almost not disputed, it is established that action of Management is arbitrarily unjust and illegal.

Form the perusal of the record in the light of aforesaid arguments, following issues arises for determination:

1. **Whether the petitioner is workman as defined under Section 2(S) of the Act.**
2. **Whether the action of the Management in terminating services of the petitioner is stigmatic and is arbitrary.**

Issue No. 1.

Section 2(S) of the Act, which defines Workman, is being reproduced as follows:

2(s) “workman” means any person including an apprentice employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person—

(i) who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 (62 of 1957); or

- (ii) who is employed in the police service or as an officer or other employee of a prison; or
- (iii) who is employed mainly in a managerial or administrative capacity; or
- (iv) who, being employed in a supervisory capacity, draws wages exceeding ten thousand rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature.

Learned Counsel for Management has relied on judgment of **Hon'ble High Court of Bombay in the case of Union Carbide (India) Ltd. V.s. Ramesh Kumbha and Others reported in MANU/MH/0073/1999** and **another judgment of the same High Court in the case of Union Carbide (India) Ltd. V.s. D. Samuel and Others reported in MANU/MH/1713/1998**. In these two cases, after analyzing the judgment of various High Courts and Hon'ble Supreme Court, the Single Bench of Hon'ble Bombay High Court has summarized the principles on the basis of which it is to be decided whether the Workman is in supervisory capacity or not. These tests mentioned in **Para 34 and 35** of the Judgment are being reproduced as follows:

Para-34. In so far as the Apex Court is concerned, some of the tests laid down are:

- (1) Designation is not material but what is important is the nature of work.
- (2) Find out the dominant purpose of employment and not any additional duties the employee may be performing.
- (3) Can he bind the Company/employer to some kind of decisions on behalf of the Company/employer.
- (4) Has the employee power to direct or oversee the work of his subordinates.
- (5) Has the power to sanction leave or recommend it; and
- (6) Has he the power to appoint, terminate or take disciplinary action against workmen.

Para-35. From the judgment of this Court and the other High Courts some of the tests apart from what the Apex Court has stated are:

- (a) Whether the employee can examine the quality of work and whether such work is performed in satisfactory manner or not;
- (b) Does the employee have powers of assigning duties and distribution of work;
- (c) Can he indent material and distribute the same amongst the workmen;
- (d) Even though he has no authority to grant leave does he have power to recommend leave;
- (e) Are there persons working under him;
- (f) Has he the power to supervise the work of men and not merely machines;
- (g) Does he mark the attendance of other employees;
- (h) Does he write the confidential reports of his subordinates.

Now analyzing the evidence in the case in hand on the basis of tests laid down in the aforesaid Judgment it comes out that the role and duties of the Applicant/Petitioner have not been defined in his letter of Appointment. In his cross-examination, he has stated that Agents used to work under him on commission basis, he used to supervise their work and organize Field Meetings. Also that he used to process claims as well that he had made total 85 agents out of which 20 to 25 used to work regularly with him. Learned Counsel for Management has stated that this is a clear admission by the Petitioner that he worked in Supervisory Capacity. On the other hand, it has been submitted on behalf of the Workman by his Learned Counsel that his responsibilities were to work closely with the agents, provide assistance to them and work on equal footing with agents. The petitioner has filed a supplementary affidavit in which he has stated that the Agents engaged by him for selling insurances policies were paid commissions by Management and the Appointment Letters were issued by Management to the Agents. The job of the petitioner was only to forward the names of the persons willing to work as Agents. All power to terminate, suspend, supervise or management was with the Management. It is also stated in the supplementary affidavit that the services conditions as well engagement of the Agents were not regulated by the petitioner rather these were regulated by Management. His job was only to engage more and more Agents on commission basis, also it has been stated that the petitioner and the agents fully associated each other in fulfilling their targets. This supplementary affidavit has been filed by the Petitioner in compliance of order of this Tribunal dated **27.09.2024** in which petitioner was directed to file supplementary affidavit on the points mentioned in the order. The Copy of this affidavit has been served on the Management. The Management has not opted to cross-examine the petitioner on this rather has filed a counter affidavit to this supplementary affidavit on behalf of the Management wherein it has been stated that in fact, it was the petitioner which used to sanction leave, initiate disciplinary action, transfer employees under him and regulate agents which was

within his powers. This affidavit is also has uncross-examined. If the petitioner used to appoint agents under his signature or used to issue transfer orders or in-state disciplinary action there must have been documents in this respect with the Management which the Management could produce to corroborate their case. As has been stated earlier, the role and responsibility of the petitioner has not been defined in his Appointment Letter or by any Office Order or Circular of the Management. Hence, in absence of any other evidence for corroborating the case of Management that the Petitioner used to work in a supervisory capacity as mentioned by Management. **The case of the Management that Petitioner is not a workman under Section 2(S) of the act is held not proved.**

Hence, on the basis of above action the petitioner is held to be a workman as defined under Section 2(S) of the Act.

Issue No. 1 is answered accordingly.

Issue No. 2

It is undisputed that the petitioner received complements and felicitation by Management in February, April, May and June 2021 and he was ranked either first or second in his group. This is also not disputed that first time he was informed about his below average performance by the Management on 16.07.2021 and was put under Performance Improvement Plan(PIP) requiring him to the meet the minimum performance benchmark of MTD 50% by 15.08.2021. The case of Management is that due to his non-performance a formal Performance Improvement Plan was communicated with the petitioner vide letter of Management dated 16.07.2021 wherein he was asked to seek necessary guidance and inputs from his superiors and was expected to meet the minimum performance benchmark by 15.08.2021. Due to his non-performance, a show-cause notice dated 20.08.2021 was served on him informing him that his performance during the Performance Improvement Plan period has been a matter of concern for Management and thereafter on 23.08.2021 he was terminated from services by way of terminating the contract of his appointment under Clause 18 and 19(2)(J) of the appointment letter.

Clause 18 and 19 (2) (J) are being reproduced as follows:-

The letter dated 20.08.2021 which is show-cause notice according to Management has been proved as Exhibit M-1, it reads as follows:-

“Akhilesh”

Considering your consistent non-performance you were put under a formal Performance Improvement Plan (PIP) which was initiated on 16th July, 2020.

We hereby reinstate that your performance during PIP period has been a cause of concern for us which has been communicated to you.

Thereafter, Management has issued letter dated 23.08.2021 to the petitioner which is letter terminating his services. This letter is Exhibit M-4. The relevant portion of this letter is being reproduced as follows:-

This is in continuation to the PIP letter that was issued to you on 16th July 2021 basis your AMJ'21 performance, it has been found that you have failed to achieve your PIP targets. Also you have been using threatening and foul language with other colleagues in the organization which is against the code of conduct. As per clause no. 18 & 19 (J) of your appointment letter dated 13th February, 2021, company has a right to end your services by giving 30 days notice period.

With reference to the show-cause notice issued to you on 20th August 2021 and the above mentioned clause, the Company has ended your contract and you will be paid salary in lieu of your notice period in your full & final settlement.

Perusal of this letter (Exhibit M-4) reveals two things. **First**, there is a charge that the petitioner has been using threats and foul language with his Colleagues which is against code of conduct. And **Secondly**, the letter dated 20.08.2021 (Exhibit M-3) was show-cause notice with respect to his non performance. The letter dated 20.08.2021 (Exhibit M-3) which Management claims to be show-cause notice, does not say so and a petitioner has not been required by Management to show-cause by this notice letter dated 20.08.2021. **Secondly**, using foul language by petitioner is new charge leveled first time by Management in the letter of termination of his termination (Exhibit M-4).

As it is established that grounds of termination of services of Petitioner by Management has been two fold, **Firstly** his non-performance though he was in their First or Second ranked in his group till June, 2021 and **Secondly**, use of foul language towards Colleagues, both these charges are stigmatic. Settled provisions of law in this respect is that, when termination of services is awarded to an Employee on the basis of charge which is stigmatic. In such a situation, it will be deemed as stigmatic, then workman must be given an opportunity to explain it. In this case, it is not been done by Management. **Hence, the action of Management in terminating the services of the petitioner in the case in hand being stigmatic is held unjust, illegal and arbitrary.**

Issue No. 2 answered accordingly.

On the basis of findings on issues mentioned above, the petitioner is held to be entitled to be reinstated in service of Management on the post and the capacity held by him on the date of letter of termination of his services ie; 23.08.2021 and is held entitled to back-wages along with all the benefits from the day of his termination, deeming him to be in appointment of Management. He is also held entitled to litigation cost quantified at Rs. 25,000/- from Management. Management is under obligation to comply with the award within 90 days from the date of this order/Award failing which interest @ 6% per annum from the date of award till payment. Petition stands disposed accordingly.

DATE:-10/01/2025

P. K. SRIVASTAVA, Presiding Officer

नई दिल्ली, 10 फरवरी, 2025

का.आ. 184.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मेसर्स मोहन कुमार; एयरपोर्ट अथॉरिटी ऑफ़ इंडिया के प्रबंधन के संबद्ध नियोजकों और श्री दीपक राजक के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, हैदराबाद, पंचाट (रिफरेन्स न.- सीजीआईटी/एलटी/-आरसी/64/2019) को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 10.02.2025 को प्राप्त हुआ था।

[सं. जेड-16025/04/2025-आईआर (एम)-7]

दिलीप कुमार, अवर सचिव

New Delhi, the 10th February, 2025

S.O. 184.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Reference No. CGIT/LC/-RC/64/2019) of the **Central Government Industrial Tribunal cum Labour Court, Jabalpur** as shown in the Annexure, in the Industrial dispute between the employers in relation to M/s Mohan Kumar; Airport Authority of India and Sri Deepak Rajak which was received along with soft copy of the award by the Central Government on 10.02.2025.

[No. Z-16025/04/2025-IR(M)-7]

DILIP KUMAR, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, JABALPUR

No. CGIT/LC/R/64/2019

Present: P.K.Srivastava

H.J.S..(Retd)

Shri Deepak Rajak,

S/o Shriram Rajak,

R/o. Airport Colony, Khajuraho,

Dist. Chhatarpur (M.P.)

Workman

Versus

M/s Mohan Kumar,

Contractor, R/o Bunglow No.14,

New Colony, Jagarnathpur,

Dhruva, Ranchi, (Jharkhand) – 834004

The Airport Director,
Airport Authority of India, Civil Aerodrome,
Khajuraho, Dist. Chhatarpur (M.P.)

Management

AWARD

(Passed on this 09th day of January-2025.)

As per letter dated 15/10/2019 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this tribunal under section-10 of I.D. Act, 1947 as per reference number J-1(2-7)/2019-IR dt. 15/10/2019. The dispute under reference related to :-

“Whether the action of the management of M/s. Mohan Kumar, Contractor of Airport Authority of India, Civil Aerodrome, Khajuraho, Dist. Chhatarpur (Madhya Pradesh) in terminating the services of Shri Deepak Rajak S/o. Shriram Rajak, Ex-Sr. Supervisor w.e.f. 03.07.2017 is fair, legal and justified? If not, to what relief the concerned workman is entitled to ? ”

After registering the case on reference received, notices were sent to the parties and were duly served on them. Time was allotted to the workman to submit his statement of claim. In spite of the allotment of time and service of notice, the workman never turned up and submitted his statement of claim. Management also did not file its written statement of claim/ defence. No evidence was ever produced by any of the parties in this Tribunal.

The Initial burden to prove his claim is on the workman. Since the workman did not file any pleading nor did he file any evidence, in the absence of any evidence in support of holding the claim of the workman not proved, the reference deserves to be answered against the workman and is answered accordingly.

AWARD

In the light of this factual backdrop, holding that the claim of the workman is not proved, the reference deserves to be answered against the Workman and is answered accordingly.

Let the copies of the award be sent to the Government of India, Ministry of Labour & Employment as per rules.

P. K. SRIVASTAVA, Presiding Officer

DATE: 09/01/2025

नई दिल्ली, 10 फरवरी, 2025

का.आ. 185.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भारती एएक्सए लाइफ इन्सुरेंस कंपनी लिमिटेड के प्रबंधन के संबद्ध नियोजकों और श्री सुनील धर के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-2, चंडीगढ़, पंचाट (रिफरेन्स न.- 45/2010) को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 10.02.2025 को प्राप्त हुआ था।

[सं. एल – 17012/20/2009-आईआर (एम)]

दिलीप कुमार, अवर सचिव

New Delhi, the 10th February, 2025

S.O. 185.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (**Reference No. 45/2010**) of the **Central Government Industrial Tribunal cum Labour Court-2, Chandigarh** as shown in the Annexure, in the Industrial dispute between the employers in relation to **Bharti AXA Life Insurance Company Limited** and **Sri Sunil Dhar** which was received along with soft copy of the award by the Central Government on 10.02.2025.

[No. L-17012/20/2009-IR(M)]

DILIP KUMAR, Under Secy.

ANNEXURE
IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II,
CHANDIGARH.

Present: Mr. Kamal Kant, Presiding Officer.

ID No. 45/2010

Registered on:- 13.07.2010

Sh. Sunil Dhar son of Sh. T N Dhar, R/o 56 A, Bhawani Nagar, Janipur, Jammu-180007.

----Applicant

Versus

1. Chief Executive Officer, Bharti AXA Life Insurance Company Limited, 601-602, Sixth Floor, Raheja Titanum, Off Western Express Highway, Goregaon (East) Mumbai.
2. Director H R, Bharti AXA Life Insurance Company Limited, 601-602, Sixth Floor, Raheja Titanum, Off Western Express Highway, Goregaon (East) Mumbai.
3. Regional Sales Manager, Bharti AXA Life Insurance Company Limited, 601-602, Sixth Floor, Raheja Titanum, Off Western Express Highway, Goregaon (East) Mumbai.
4. Mr. J C Goel, Assistant Regional Sales Manager, M/s Bharti AXA Life Insurance Company Limited, SCO 28-29-30, Sector 9D, Chandigarh.

-----Respondents

Present:- Sh. Rahul Dev, AR for applicant.
Sh. Chetan Gupta, AR for Respondents.

AWARD

Passed On:-10.01.2025

1. Central Government vide Notification No.L-17012/20/2009 (IR(M) dated 30.06.2010, under Clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Dispute Act, 1947 (hereinafter called as the ID Act), has referred the following industrial dispute for adjudication to this Tribunal:-

“Whether Shri Sunil Dhar, Branch Sales Manager in Bharti AXA Life Insurance Company Ltd. Chandigarh is workman as defined under ID Act, 1947?”

If so, whether the action of the management of M/s Bharti Axa Life Insurance Company Ltd. in terminating the services of Sh. Sunil Dhar w.e.f. 23.07.2009 is justified? What relief the workman concerned is entitled to and from which date?”

2. It has been averred by the applicant that he was appointed by respondent no.2 as Branch Sales Manager on 08.07.2008 and was posted in Jammu Branch under the direct control of respondent no.3. He was the best performer of the company and even received certificates and letter of appreciation from his seniors even during the peak de-growth period for the whole north zone II. Respondent no.4 started grudging against the applicant as he was the best performer and achiever. As per policy of the company, respondent no.4 honored counterpart of the applicant namely Sh. Shashi Katoch by visiting his house, but he never visited in the house of the applicant to honor him. Respondent no.4 started victimizing the applicant due to his success and achievement. His counterpart Sh. Shashi Katoch was given annual increment of Rs.38,000/-, whereas the applicant was given annual increment of Rs.13,000/- only on the asking of respondent no.4. On 25th May, 2009 applicant was telephonically informed that his April 2009 review has been done and as sales are low, so is being put up on Performance Improvement Plan (PIP) for 15 days and had to complete his target of April and May 2009 in the remaining 5 days of May 2009, which was an unrealistic target given by the company. Just after two days i.e. on 27th May, 2009, a recruit advertisement was posted on naukri.com for the post on which the applicant was working at Jammu Headquarters. On 8th July, 2009, Mr. Vishesh Dimri ZM HR sent a mail and directed him to come to Jalandhar on 14th July 2009 to have a discussion with the respondent no.2 to 4. On 14th July, 2009, he met with respondent no.2 to 4 at Jalandhar, where they asked the applicant either to opt for transfer to Karnal or opt for a lower post on lower salary. On 15th July 2009, the applicant sent a mail to the respondents conveying his willingness to join at Karnal. The respondent instead of sending the transfer letter to him, served termination notice on his personal email id on 23rd July, 2009. The applicant also approached the respondent no.2 and 3 and pleaded them to at least withdraw the above said impugned order regarding termination, which was disgraceful bolting the doors for his appointment elsewhere, but they refused to listen to his appeal.

3. Thereafter, applicant approached the Regional Labour Commissioner Jammu (hereinafter called as RLC, Jammu). Demand notice dated 24.08.2009 was issued to the respondents. After receiving the notice, respondents appeared before the RLC Jammu and filed their reply. Rejoinder dated 26.10.2009 was also filed by the applicant.

4. The respondents gave undue importance to the fact that the performance of sales of applicant is below target, but till April 2009, the applicant was the best performer of the company. The respondents gave undue importance to the fact that the rate of dishonor of cheques is high. The cheques dishonor is a common feature in the financial market and most so in Insurance Industry. It is prayed that the impugned order dated 23.07.2009 terminating the applicant from service be quashed being in violation of the ID Act and he be reinstated into service with all consequential benefits including full back wages, seniority and further promotion to the next higher post inter alia on the grounds as mentioned in the claim petition.

5. The management filed written statement raising objection that application is not maintainable in view of the fact that the applicant does not fall within the ambit and definition of the term workman as defined under Section 2 (S) of the ID Act. It is submitted that the workman was appointed as Branch Sales Manager and his remuneration/salary was fixed at Rs.6,75,000/- per annum. His duties were to procure business and to organize and develop the business within the allotted area. His status was that of a manager discharging functions of managerial nature and thus cannot be nomenclature as a workman. It is further submitted that the management company dealing in Insurance Sector would not fall within the definition of Industry, to which the ID Act is applicable. The applicant was terminated on account of his poor performance. The applicant did not improve his performance despite giving various opportunities and was negligent in performance of the same. The applicant was indulged in fraudulent ways to achieve business target by sourcing policies to his relatives and friends and subsequently such policies would get lapsed due to non-payment of premium. The company terminated the services of the applicant by strictly complying with the provisions of the Contract of Employment, which were accepted and signed by the applicant with the company. Moreover, being a contract of personal service, the applicant cannot claim any reinstatement or other benefits before this Tribunal. It is submitted that the respondent was the senior officer in the hierarchy of the Company. The appreciation certificates are handed over to the employees of the company as a matter of routine. The work and conduct of the applicant was not satisfactory. The applicant is trying to hide his incompetence and below average performance by casting aspersions on his superiors by raising false and self created submissions. It is denied that there was any grudge or bias against the applicant for grant of increments and rating is formulated in accordance with the company's policies and the performance of the employees. The applicant was put on performance investment plan, which was accepted by him in writing and in spite of repeated opportunities, the applicant failed to improve his performance and hence his services were terminated on 23.07.2009. The applicant himself opted for transfer to Karnal for a lower post, but the said offer was never accepted by the respondents. It is submitted that the impugned order is totally legal and justified. The respondent duly appeared before the RLC, Jammu and filed reply to the demand notice issued by the applicant. The applicant's actual premium collection targets were low. The applicant presumed premium collection targets achieved is appearing on higher side because of logging monthly premium new business, which would subsequently get lapsed or cancelled because of the non-payments of premiums. The applicant was handed over a cheque no.097532 dated 31.08.2009 for Rs.1,02,249/- towards full and final settlement in the office of RLC, Jammu, which the applicant deliberately refused to accept. It is prayed that the reference may be declined.

6. Parties were given opportunity to lead evidence.

7. The applicant has examined himself as WW1 and filed his affidavit in evidence as Ex.A/1 along with documents C1 to C10 and has been cross-examined by the learned authorized representative of management.

8. The management has filed affidavit of Sh. Sandeep Kumar s/o Sh. Ashok Kumar, working as Channel Operation Executive at Bharti Axa Life Insurance Company Ltd. SCO 208-209, Sector 34-A, Chandigarh, who filed his affidavit in evidence as Ex.MW1/A along with documents Annexure R-1 to R-10 and has been cross-examined by the learned authorized representative of applicant.

9. I have given due consideration to the arguments advanced by both the parties.

10. While arguing the case, Id. counsel for applicant contended that applicant falls under the definition of the workman as he was working as Sales Manager along with his team mates. He was designated as Branch Sales Manager because of the fact that he was elder among all and a better performer. He was not appointing or punishing authority and he falls under the definition of the workman as defined under Section 2 (s) of the ID Act, which read as follow:-

2 (s) ["workman" means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person-

(i) who is subject to the Air Force Act, 1950 ([45 of 1950](#)), or the Army Act, 1950 ([46 of 1950](#)), or the Navy Act, 1957 ([62 of 1957](#)); or

(ii) who is employed in the police service or as an officer or other employee of a prison, or

(iii) who is employed mainly in a managerial or administrative capacity, or

(iv) *who, being employed in a supervisory capacity, draws wages exceeding [ten thousand rupees] per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature.*]

11. He further contended that the applicant being workman was terminated from service without following the procedure given in Section 25 F of the ID Act. So he is entitled for reinstatement with all consequential benefits.

12. On the other hand, Id. counsel for respondent contended that the applicant was working as Branch Sales Manager and 8 to 10 persons were working in his team and he does not fall under the definition of workman. To support his view, he placed reliance upon the judgment in **Civil Appeal No.5187 of 2023 titled as M/s Bharti Airtel Limited versus A S Raghavendra**, wherein it has been held that mere absence of power to appoint, dismiss or hold disciplinary inquiries against other employees, would not and could not be the sole criterion to determine whether the person is workman or not. The employee holding any high ranking position, but without powers to appoint, dismiss or hold disciplinary enquiry would be included under the umbrella of “workman” under Section 2(s) of the ID Act. He further contended that since applicant is not a workman, so his claim is not maintainable and his reference be declined.

13. The question which arises for consideration is whether the establishment is an industry. The Hon’ble Apex Court in the case of **Bangalore Water Supply & Sewerage Board Vs. A. Rajappa 1978(36) FLR 266** dealt at length with the ambit and scope of expression “industry” as defined in Section 2(J) of the ID Act, and has laid down triple test for determining whether a particular establishment is industry or not. The triple test is where (a) systematic activity (b) organized by cooperation between employer and employee (the direct and substantial element is commercial) (c) for the production or distribution of goods and services to calculated to satisfy human wants and wishes prima facie is an “Industry” in that enterprise. Coming into the case in hand, the work assigned to the workmen relates to selling of policies of different nature for commercial purposes with the cooperation of workers and management and in this way, distribution of service is being done by the respondent no.1 to satisfy the human wants and wishes and thus it is an Industry as it fulfill triple test as given by the Hon’ble Supreme Court on India in **Bangalore Water Supply & Sewerage Board (supra)**.

14. Next question which arise for consideration is whether the applicant is workman as defined under Section 2(s) of the ID Act. To my mind, the claimant is a workman within the definition of Section 2(s) of the ID Act. In this regard, reliance can be made to the decision in the case of **Devinder Singh Vs. Municipal Council, Sanaur, AIR 2011 Supreme Court 2532**, wherein the Hon’ble Apex Court while interpreting the provisions of Section 2(s) of the ID Act which deals with the definition of “workman” has observed as under :

“The source of employment, the quantum of recruitment, the terms & conditions of employment/ contract of service, the quantum of wages/ pay and mode of payment are not at all relevant for deciding whether or not a person is a workman within the meaning of Section 2(s) of the Act. The definition of workman also does not make any distinction between full time and part time employee or a person appointed on contract basis. There is nothing in the plain language of Section 2(s) from which it can be inferred that only person employed on regular basis or a person employed for doing whole time job is a workman and the one employed on temporary, part time or contract basis on fixed wages or as a casual employee or for doing duty for fixed hours is not a workman.”

It is clear from the perusal of aforesaid observations that even if a person is engaged on temporary, part time or contract basis or for doing any other kind of work and is duly paid wages for the said work, in that eventuality such a person would be covered by the definition of “workman” as provided in Section 2(s) of the ID Act. Thus, nature of appointment or source of appointment is not relevant to be a “workman” within the ID Act.

15. So far as the case law titled as **M/s Bharti Airtel Ltd. (supra)** cited by Id. counsel for management is concerned, in the said case, applicant A S Raghavendra was held not to be workman in view of the fact that he was discharging managerial duty and was getting numerous benefits as perks such as special allowance, car hiring charges, petrol and maintenance, driver’s salary etc. Under these circumstances, he was held to not to be workman. However, in this case, perusal of appointment letter Annexure W-1 reveals that no such facility was provided to applicant, rather applicant was working with the cooperation of other workmen. Even perusal of cross examination of management witness namely Sh. Sandeep Kumar son of Sh. Ashok Kumar reveals that no power was assigned to applicant and applicant was not appointing authority of his co-workers and he cannot even sanction any leave. Under these circumstance, he is held to be workman and the case law cited by the Id. counsel for management is not applicable to the facts and circumstances of the present case.

16. There is no dispute about the proposition of law that onus to prove that applicant was in the employment of management is always on the applicant and it is for the applicant to adduce evidence to prove factum of his employment with the management. Such evidence may be in the form of receipt of salary of wages for 240 days or record of his/her appointment or engagement for that year to show that he/she has worked with the employer for 240 days or more in a calendar year preceded his termination. In this regard, reference may be made to **Batala Co-Op. Sugar Mills Ltd. vs. Sowaran Singh (2005) 8 supreme Court cases 481** as well as **Director Fisheries Terminated Division versus Bhikubhai Meghajibhai Gadva (2012) 1 SCC 47**.

17. Now the question arises whether the workman has completed 240 days prior to his termination and he was issued retrenchment compensation or salary in lieu of his retrenchment as per Section 25 F of the ID Act. In this regard, it is pointed out that the workman has categorically stated in his affidavit that he worked continuously from July, 2008 till termination and this fact has not at all been controverted by the respondent in his written statement or in the deposition of statement of Sh. Sandeep Kumar son of Sh. Ashok Kumar, who appear on behalf of the management. Thus it is presumed that the workman has worked 240 days prior to his termination preceding one year from the date of his termination and thus his termination was against the provisions of Section 25 F of the ID Act. It is added here that during the course of argument as well as in the written statement, respondent has taken the stand that workman was given one month salary during the conciliation proceedings before the RLC Jammu vide cheque no.097532 dated 31.08.2009. Giving a cheque during the conciliation proceedings would not make compliance of the Section 25 F of the ID Act as the amount as per Section 25 F of the ID Act should have been given prior to his retrenchment. The said act of tendering cheques by the management cannot done away the wrong done by the respondent. Hence, there is non-compliance of provisions of Section 25 F of the ID Act and thus applicant was entitled for re-instatement.

18. Now the residual question is whether the claimant/workman is entitled to any incidental relief of payment of back wages and/or reinstatement with continuity of service. It is proved on record that the workman has worked from 08.07.2008 to 23.07.2009 as Branch Sales Manager and his services were dispensed with vide termination letter dated 23.07.2009(Annexure W-7) without complying with the provisions of Section 25-F of the ID Act.

19. The Hon'ble Apex Court in case "Deepali Gundu Surwase v/s Kranti Junior Adhyapak Mahavidyalaya" reported as (2013) 10 SCC 324 has held as under:-

"The propositions which can be culled out from the aforementioned judgments are:

- i) In cases of wrongful termination of service, reinstatement with continuity of service and back wages is the normal rule.
- ii) Ordinarily, an employee or workman whose services are terminated and who is desirous of getting back wages is required to either plead or at least make a statement before the adjudicating authority or the Court of first instance—that he/she was not gainfully employed or was employed on lesser wages. If the employer wants to avoid payment of full back wages, then I has to plead and also lead cogent evidence to prove that the employee/workman wads gainfully employed and was getting wages equal to the wages he/she wads drawing prior to the termination of service. This is so because it is settled law that the burden of proof of the existence of a particular fact lies on the person who makes a positive averments about its existence. It is always easier to prove a positive fact than to prove a negative fact. Therefore, once the employee shows that he was employed, the onus lies on the employer to specifically plead and prove that the employee was gainfully employed and was getting the same or substantially similar emoluments."

20. The Hon'ble Apex Court also held that different expressions are used for describing the consequence of termination of a workman's service/employment/ engagement by way of retrenchment without complying with the mandate of Section 25-F of the ID Act. Sometimes it has been termed as void ab initio sometimes as illegal per se, sometime as nullity and sometimes as non-est. Leaving aside the legal semantics, we have no hesitation to hold that termination of service of an employee by way of retrenchment without complying with the requirement of giving one month's notice or pay in lieu thereof and compensation in terms of Section 25-F (a) and (b) has the effect of rendering the action of the employer and nullity and the employee is entitled to continue in employment as if his service was not terminated. (Anoop Sharma vs. Executive Engineer, Public Health Division No.1 Panipat (2010) 5 SCC 497).

21. A Bench of three Judges of the Hon'ble Supreme Court in the case of Hindustan Tin Works Private Limited y. Employees of Hindustan Tin Works Private Limited (1979) 2 SCC 80, held that relief of reinstatement with continuity of service can be granted where termination of service is found to be invalid. It would mean that the employer has taken away illegally the right to work of the workman contrary to the relevant law or in breach of contract and simultaneously deprived the workman of her earnings. If thus the act of employer is found to be totally illegal and arbitrary, in that eventuality the workman is required to be reinstated, with full back wages. Plain common sense also dictates that the removal of an order terminating the services of workman must ordinarily lead to the reinstatement of the services of the workman along with payment of back wages.

22. However, Hon'ble Apex Court in the case General Manager, Haryana Roadways Vs. Rudan Singh, reported as 2005 SCC (L&S) 716 observed as under :-

"8. There is no rule of thumb that in every case where the Industrial Tribunal gives a finding that the termination of service was in violation of Section 25-F of the Act, entire back wages should be awarded. A host of factors like the manner and method of selection appointment i.e. whether after proper and advertisement of the vacancy or inviting applications from the employment exchange, nature of appointment namely, whether ad hoc, short term, daily wage, temporary or permanent in character, any special qualification required for the job and the like should be weighed and balanced in taking a decision regarding award of back wages. One of the important factors which has to be taken into consideration is the length of service, which the workman had rendered with the employer. If the workman has rendered a considerable period of service and his services are wrongfully terminated, he may be awarded full or partial back wages keeping in view the fact that at this age and the qualification possessed by him he may not be in a

position to get another employment. However, where the total length of service rendered by a workman is very small, the award of back wages for the complete period i.e. from the date of termination till the date of the award, which our experience shows is often quite large, would be wholly inappropriate. A regular service of permanent character cannot be compared to short or intermittent daily wage employment though it may be for 240 days in a calendar year.

23. Having regard to the legal position as discussed above and the facts, this Tribunal is of the firm view that the claimant/workman has been terminated without following the procedure laid down under Section 25 F of the ID Act. It is pertinent to mention that he has specifically not pleaded that he is not working anywhere. Moreover, nothing has been asked from this witness regarding his employment/termination as such, it cannot be decided conclusively with respect to his future employment after the alleged retrenchment/termination. Hence, the claimant/workman is entitled for reinstatement into service on the same post from the date of his termination with 50% back wages inasmuch as termination of claimant/workman is per-se illegal.

24. However, the applicant has attained the age of 58 in the year 2022, as applicant appeared in the witness box on 13.11.2014 and has deposed on oath that he was 50 years on that date. So he has attained the age of 58 years in the year 2022 and as per the appointment letter, the date of his retirement is on attaining of age of 58 years. Therefore, he cannot be reinstated, however, he is entitled for 50% back wages along with other benefits as per policy of the management.

25. The reference is answering in favor of the applicant as stated above. Let copy of this award be sent to the appropriate Government as required under Section 17(1) of the Act for publication.

KAMAL KANT, Presiding Officer

नई दिल्ली, 11 फरवरी, 2025

का.आ. 186.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एंड्रयू यूल एंड कंपनी लिमिटेड, के प्रबंधन के संबद्ध नियोजकों और श्री समरेन्द्र नाथ मुखर्जी, कामगार, के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण-सह-श्रम न्यायालय, कोलकाता, पंचाट (संदर्भ संख्या REF. No. 39 OF 2013) को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 11.02.2025 को प्राप्त हुआ था।

[सं. एल – 42011/100/2013-आईआर (डीयू)]

दिलीप कुमार, अवर सचिव

New Delhi, the 11th February, 2025

S.O. 186.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. **No. 39 OF 2013**) of the **Central Government Industrial Tribunal cum Labour Court, Kolkata**, as shown in the Annexure, in the Industrial dispute between the employers in relation to **Andrew Yule & Company Limited, and Shri Samarendra Mukherjee, Worker**, which was received along with soft copy of the award by the Central Government on 11.02.2025.

[No. 42011/100/2013 -IR (DU)]

DILIP KUMAR, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT KOLKATA

Present : Justice K. D. Bhutia, Presiding Officer.

REF. NO. 36 OF 2013

REF. NO. 37 OF 2013

REF. NO. 38 OF 2013

REF. NO. 39 OF 2013 AND

REF. NO. 43 OF 2013

Parties : Employers in relation to the management of

Andrew Yule & Company Limited

VS

- 1. Sri Naresh Kumar Chakraborty,**
- 2. Sri Mihir Koley,**
- 3. Sri Joydeb Chatterjee,**
- 4. Sri Samarendra Nath Mukherjee, and**
- 5. Sri Subhas Chandra Naskar**

Appearance:

On behalf Andrew Yule & Company Limited: Mr. Sushil Kumar Karmakar, Ld. Advocate.

On behalf of Five workmen: Mr. Saibal Mukherjee, Ld. Advocate.

Dated: 21st January, 2025

AWARD

This common award disposes all the above mentioned five reference cases as issues involved in all those cases are exactly same and parties are five workmen who have alleged to have been illegally terminated from their permanent regular service by their employer Andrew Yule & Co. Ltd., on their attaining the age of 58 years.

The Central Government, Ministry of Labour vide Order Nos. L-42011/103/2013 –IR(DU) dated 25-07-2013; No.L-42011/102/2013-IR(DU) dt.25-07-2013; No. L-42011/101/2013-IR (DU) dt. 25-07-2013; No. L-42011/100/2013-IR (DU) dt.29-07-2013 and No L-42012/59/2013-IR (DU) dt. 12-09-201, in exercise of power conferred sub-section 1(d) and sub-section 2(A) of section 10 of Industrial Dispute Act, 1947 has referred the following disputes to this Tribunal for adjudication:-

1. (Ref. 36/2013)

“Whether the action of the management of Andrew Yule & Company Limited in terminating the service of Sri **Naresh Kumar Chakraborty** w.e.f. 01-01-2012 by way of premature retirement without extending the benefit of enhanced age of superannuation from 58 to 60 years and implementing the orders of the Ministry of Heavy Industries & Public Enterprises, Dept. of Heavy Industries, Govt. of India vide memo no.10 (23)/2011-PEI dated 03-11-2011, with immediate effect is legal and justified? To what relief the workman is entitled to?”

2. (Ref. 37/2013)

“Whether the action of the management of Andrew Yule & Company Limited in terminating the service of Sri **Mihir Koley** w.e.f. 01-01-2012 by way of premature retirement without extending the benefit of enhanced age of superannuation, from 58 to 60 years and implementing the orders of the Ministry of Heavy Industries & Public Enterprises, Dept. of Heavy Industries, Govt. of India vide memo no. 10(23)/2011-PEI dated 03-11-2011, with immediate effect is legal and justified? To what relief the workman is entitled to?”

3. (Ref. 38/2013)

“Whether the action of the management of Andrew Yule & Company Limited in terminating the service of Sri **Joydeb Chatterjee** w.e.f. 01-02-2012 by way of premature retirement without extending the benefit of enhanced age of superannuation, from 58 to 60 years and implementing the orders of the Ministry of Heavy Industries & Public Enterprises, Dept. of Heavy Industries, Govt. of India vide memo no. 10(23)/2011-PEI dated 03-11-2011, with immediate effect is legal and justified? To what relief the workman is entitled to?”

4. (Ref. 39/2013)

“Whether the action of the management of Andrew Yule & Company Limited in terminating the service of Sri **Samarendra Nath Mukherjee** w.e.f. 01-07-2012 by way of premature retirement without extending the benefit of enhanced age of superannuation, from 58 to 60 years and implementing the orders of the Ministry of Heavy Industries & Public Enterprises, Dept. of Heavy Industries, Govt. of India vide memo no. 10(23)/2011-PEI dated 03-11-2011, with immediate effect is legal and justified? To what relief the workman is entitled to?”

5. (Ref. 43/2013)

“Whether the action of the management of Andrew Yule & Company Limited in terminating the service of Sri **Subhas Chandra Naskar** w.e.f. 01-01-2012 by way of premature retirement without extending the benefit of enhanced age of superannuation, from 58 to 60 years and implementing the orders of the Ministry of Heavy Industries & Public Enterprises, Dept. of Heavy Industries, Govt. of India vide memo no. 10(23)/2011-PEI dated 03-11-2011, with immediate effect is legal and justified? To what relief the workman is entitled to?”

That contents of their separate claim statements appear to be exactly same save and except their date of joining, category of service to which they joined the establishment of Andrew Yule & Co. Ltd., their date of birth and their date of superannuation.

Sri Naresh Kumar Chakraborty, in his written statement has alleged that he joined the establishment of Andrew Yule & Co. Ltd. as a clerical staff (Typist) on 16-08-1979 on probation and later his service was confirmed on 16-02-1980 and all along he was posted at Head Office at Kolkata.

Sri Mihir Koley, in his written statement has alleged that he joined the establishment of Andrew Yule & Co. Ltd. as a Subordinate Staff (Driver) on 20-03-1980 on probation and later his service was confirmed on 20-09-1980 and all along he was posted at Head Office at Kolkata.

Sri Joydeb Chatterjee, in his written statement has alleged that he joined the establishment of Andrew Yule & Co. Ltd. as a Typist on 01-09-1987 and all along he was posted at Head Office at Kolkata.

Sri Samarendra Nath Mukherjee, in his written statement has alleged that he joined the establishment of Andrew Yule & Co. Ltd. as a Durwan on 05-07-1990 and all along he was posted at Head Office at Kolkata, and

Sri Subhas Chandra Naskar, in his written statement has alleged that he joined the establishment of Andrew Yule & Co. Ltd. as a Clerk on 01-10-1985 and all along he was posted at Head Office at Kolkata.

However, they all have alleged that when they joined the establishment of Andrew Yule & Co. Ltd., their age of superannuation was fixed at 60 years. That company was declared as a sick industry in the year 2001 and as such their age of superannuation was rolled to 58 years with the approval of the Cabinet.

But later, Central Govt. had taken a decision to increase the age of superannuation of Board Level and Below Board Level employees of Central Public Sector Enterprise from 58 years to 60 years vide D.P.E. O.M. No. 18 (6)/98 –GM-GL-002 dated 19-05-1998.

Further, when the sick CPSEs started making profit after 2004, then those CPSEs requested the concerned Ministry/Department to enhance the age of superannuation of its employees from 58 years to 60 years. That D.P.E. approved the proposal to enhance the age of superannuation from 58 to 60 years on fulfilment of certain conditions by issuing memorandum No. 18(1) / 2007- GM-GL-80 dated 20-04-2007.

On receiving such memorandum Board of Directors of Andrew Yule & Co. Ltd. called a meeting on 27-07-2011 and decided to enhance the age of superannuation of its all employees from 58 to 60 years and sent a proposal to that effect before Dept. of Heavy Industries, Govt. of India for approval of proposal w.e.f. 01-04-2011. Further, the management sent a proposal letter no. AY/CMD /31 dated 03-08-2011 to the Dept. of Heavy Industries, Ministry of Heavy Industries and Public Enterprises, for enhancement of retirement age of its all employees from 58 to 60 years. That management further vide letters dt. 30-09-2011 and 05-10-2011 to the Ministry of Heavy Industries, appraised that enhancement of age of retirement from 58 to 60 years will not be applicable to the unionised employees in the workmen category placed at the tea garden of the company and who are governed by Plantation Labour Act, 1951 and workmen placed at the factories of the company, who are governed by the Industrial Employment (Standing Orders) Act, 1946.

Accordingly, Ministry of Heavy Industries and Public Enterprises, Deptt. of Heavy Industry vide memo no. 10(23)/-2011/PE.1 dated 03-11-2011, accorded approval for enhancement of the retirement age from 58 years to 60 years in respect of Board and Below Board Level and employees of Andrew Yule & Co. Ltd. governed by DPE guidelines with immediate effect. But such enhancement will not be applicable to the employees of Andrew Yule & Co. Ltd. who are governed by Industrial Employment (Standing Orders) Act, 1946 or Plantation Labour Act, 1951. On receiving such memo, the management of Andrew Yule & Co. Ltd. issued an Administrative Circular No. 2012/07 dated 01-03-2012 enhancing the age of retirement from 58 to 60 years for the Board Level and below Board Level Officer and Assistances on the Roll of the company on or after 03-11-2011.

Now, all the five workmen have alleged that all along they were posted at the Head Office of Andrew Yule & Co. Ltd. at Kolkata and which is governed by West Bengal Shops & Establishment Act and DPE guidelines. The Head Office is neither a tea garden governed by Plantation Labour Act, 1951 nor a Factory being governed by the Industrial Employment (Standing Orders) Act, 1946. It has also been alleged that there was a tripartite settlement dated 04-02-2011 under Industrial Disputes Act, 1947 in between the management of Andrew Yule & Co. Ltd. and its workmen posted at the Head Office for compliance of retirement age fixed by the Ministry.

They have alleged that in violations of memo no. 10(23)/-2011/PE.1 dated 03-11-2011 issued by Ministry of Heavy Industries and Public Enterprises, Dept. of Heavy Industry, they have been retrenched from their respective services on their attaining the of 58 years. That they have raised objection in writing against their premature retirement before the management of Andrew Yule & Co. Ltd. in the year 2012 itself but of no avail. Then they made a complaint before the Regional Labour Commissioner (Central), Kolkata, but who failed to resolve their dispute and referred their matter to the Ministry for making reference before Industrial Tribunal.

That they have alleged that due to premature retirement they have suffered financial loss and they have claimed the losses suffered due to premature retirement and other consequential financial benefits.

The management of Andrew Yule & Co. Ltd. contested the claim of all those five workmen by filing five separate written statements and where it has taken the same stand and alleged that all those five workmen were members of Andrew Yule & Co. Ltd. Workmen's Union (Calcutta Region) and they being unionised employees of the company are governed by tripartite settlement or bipartite settlement executed between the management and their unions. They are not governed by D.P.E. guidelines. That there was tripartite settlement executed between the management of the company and the unions on 04-02-2011 and where it was settled that retirement age of unionised workmen would be 58 years and they would be superannuated on the last working days on their attaining the age of superannuation in terms of their date of birth recorded in their Service Books. Such tripartite settlement was in force at the time of retirement of those employees.

It has also alleged that in Andrew Yule & Co. Ltd. there are four categories of employees namely (1) Officer Category, (2) Non-unionised Staff, who are exclusively governed by DPE guidelines, (3) Unionised Staff other than tea garden employees who are governed by tripartite agreement arrived at the intervention of Labour Commissioner and (4) Tea Garden workers governed by Plantation Labour Act, 1951. That Memo no. 10(23)/ 2011-PE-1 dated 03-11-2011 issued by Ministry of Heavy Industries and Public Enterprise, Govt. of India was/ is applicable to the employees of Andrew Yule & Co. Ltd. who comes within the purview of DPE guidelines and those who were /are Board Level, below Board Level and Assistance and not to those employees who are governed by the Industrial Employment (Standing Orders) Act, 1946, Plantation Labour Act, 1951 and unionised workmen.

Further, it has alleged that all the employees were intimated about the date of their retirement in advance by issuing notices to them. That all those employees on receiving such retirement notices made application for final withdrawal of their provident fund. That they were paid their provident fund, leave encashment and gratuity on the date of their superannuation and which they accepted without any objection and that too by issuing receipts to that effect. So, it has alleged that all five cases are barred by principle of acquiescence, estoppel and not maintainable. It has prayed for dismissal of all five reference cases.

The concerned workmen have filed rejoinder and where they have invariably reiterated what they have alleged in their claim statements.

All five workmen to prove their cases have filed their evidence in chief on affidavit. That they have tendered their evidence on affidavit and cross examined by the management of Andrew Yule & Co. Ltd.

The management of Andrew Yule & Co. Ltd. too has produced Mr. Satyendra Kumar Pandey, Dy. Manager (Personnel & Administration) as M. W.1 and who was extensively cross examined by all the five workmen.

Parties have produced same set of following documents and which have been marked as exhibits. Following documents have been filed from the side of workmen and exhibited:-

- 1) Appointment letters of Sri Naresh Kumar Chakraborty dt. 13-08-1979 as a Typist, Appointment letters of Sri Mihir Koley dt. 19-03-1980 as a probationer Driver, Sri Joydeb Chatterjee dt. 28-08-1987 as a Typist, Sri Samarendra Nath Mukherjee dt. 05-07-1990 as a Durwan and that of Sri Subhash Chandra Naskar dt. 30-09-1985 as a Clerk.
- 2) Confirmation letters dt. 14-02-1980 and 12-03-1982 of Sri Naresh Kumar Chakraborty and Sri Mihir K. Koley.
- 3) Copy of DPE guidelines dt. 19-05-1998 whereby retirement age of below Board Level employees of Central PSEs was raised from 58 to 60 years but on certain conditions,
- 4) DPE guidelines dt. 20-04-2007 whereby retirement age of Board and below Board Level employees of profit earning Central Public Sector Enterprises was enhanced from 58 to 60 years on fulfilment of certain conditions,
- 5) Extract of minutes of meeting of Board of Directors of Andrew Yule & Co. Ltd. held on 27-07-2011,
- 6) Copy of letter dt. 03-08-2011 of Andrew Yule & Co. Ltd. in respect of revision of pay scales of Board Level and below Board Level Executives and non-unionised Supervisors and enhancement of retirement age from 58 to 60 years of the employees of company,
- 7) Copy of company's letter dt. 30-09-2011, 25-07-2013 to Deptt. of Heavy Industries, where it was clarified that retirement age of unionised employees in the workmen category, placed at the Tea Gardens of the company being governed by the Plantation Labour Act, 1951 and workmen placed at the factories of the company governed by the Industrial Employment (Standing Orders) Act, 1946 was/ is fixed at 58 years and had enclosed a chart depicting the age of Officers and Assistances of the company with their date of retirement year-wise.

- 8) The letter dt. 03-11-2011 of Ministry of Heavy Industries & Public Enterprises, Govt. of India addressed to Chairman & M.D., Andrew Yule & Co. Ltd., whereby the retirement age of the employees of Andrew Yule & Co. Ltd. belonging to Board Level and below Board Level and those employees governed by DPE guidelines was enhanced from 58 to 60 years and such benefit was not extended to those employees of Andrew Yule & Co. Ltd. who are governed by the Industrial Employment (Standing Orders) Act, 1946 and those governed by Plantation Labour Act, 1951.
- 9) Administrative circular dt. 01-03-2012 issued by Andrew Yule & Co. Ltd. increasing the age of retirement from 58 to 60 years only to Board Level and below Board Level and Assistance and not to the other categories of its employees,
- 10) The memorandum of settlement dt. 04-02-2011 executed in between management of Andrew Yule & Co. Ltd. and their unions before Regional Labour Commissioner (C), Kolkata,
- 11) Copy of notices of retirement dt. 13-10-2011 issued to Sri Naresh Kumar Chakraborty, to Sri Mihir Koley who were going to attained the age of superannuation on 31-12-2011, to Sri Joydeb Chatterjee on 22-12-2011 who was going to attain age of superannuation on 31-01-2012, to Sri Samarendra Nath Mukherjee on 26-04-2012 who was going to retire on 30-06-2012 and to Sir Subhash Chandra Naskar on 13-10-2011 and who was going to retire on 31-12-2011.
- 12) Copy of joint petition dt. 06-07-2012 submitted by Sri Naresh Kumar Chakraborty, Sri Subhash Naskar, Sri Mihir Koley, Sri Joydeb Chatterjee and Sri Samarendra Nath Mukherjee to the Director (Personnel), Andrew Yule & Co. Ltd., Kolkata,
- 13) Copy of petition dt.20-07-2012 of Sri Naresh Kr. Chakraborty to Dy. Secretary, Govt. of India, Ministry of Heavy Industries & Public Enterprises,
- 14) Copy of reply dt. 26-09-2012 by Andrew Yule & Co. Ltd. to Sri Naresh Kr. Chakraborty,
- 15) Copy of complaint dt.23-05-2012, 30-11-2012, and 04-04-2013 of Sri Naresh Kr. Chakraborty and Sri Mihir Kr. Koley to R.L.C/ A.L.C, Kolkata,
- 16) Copy of letters of Sri Naresh Kr. Chakraborty, Sri Mihir Kr. Koley, Sri Joydeb Chatterjee, Sri Samarendra Nath Mukherjee and Sir Subhash Chandra Naskar to Director, Andrew Yule & Co. Ltd. dt. 26-11-2012 and 04-02-2013
- 17) Copy of self-prepared list by Sri Naresh Kr.Chakraborty, Sri Mihir Kr. Koley, Sri Joydeb Chatterjee, Sri Samarendra Nath Mukherjee and Sir Subhash Chandra Naskar, projecting names of those workmen of Andrew Yule & Co. Ltd. posted at Head Office and who have been retained beyond the age of 58 years.
- 18) Copy of letter of Andrew Yule & Co. Ltd. dt. 18-02-2013 to ALC(C), Kolkata,
- 19) Copy of proceeding before ALC (C), Kolkata dt. 20-03-2012 and 02-05-2013,
- 20) Copy of Andrew Yule & Co. Ltd.'s letter dt.05-10-2011 addressed to Jt. Secretary, Ministry of Heavy Industries showing details of no. of employees of Andrew Yule & Co. Ltd. in the category of Officer governed by DPE guidelines, non-unionised staff governed by DPE guidelines, unionised staff other than tea garden governed by tripartite settlement and tea garden workers governed by Plantation Labour Act, 1951.

On the other hand following documents have been exhibited from the side of management:-

1. Copy of letter dt.03-08-2011 of Ministry of Heavy Industries and Public Enterprises, Deptt. of Heavy Industry addressed to Chairman-Managing Director, Andrew Yule & Co. Ltd. with regard to enhancement of age of retirement from 58 to 60 years in respect of certain categories of the employees of Andrew Yule & Co. Ltd.
2. Copy of letters of settlement of P.F. account dt.20-12-2011, 12-12-2011, 27-12-2011, 21-06-2012 and 12-12-2011 submitted by Sri Naresh Kr. Chakraborty, Workman No.607, Tea Division, Sri Mihir Koley, Sri Joydeb Chatterjee, Workman no.660, Tea Division, Sri Samarendra Nath Mukherjee, Workman No.376 and Sir Subhash Chandra Naskar , Workman No.630 to the Trustee of Andrew Yule & Co. Ltd. Provident Fund Instn. for the Indian Clerical Staff.
3. Copy of mandate forms along with a receipts showing payment of Rs.1,85,656.49, Rs.5,20,847/-, Rs.3,38,350.86P and Rs.3,00,905.12P towards provident fund to Sri Naresh Kr. Chakraborty , Sri Mihir Koley, Sri Joydeb Chatterjee and Sir Subhash Chandra Naskar on 30-12-2011, 31-01-2012 and on 30-12-2011.

4. Copy of receipts issued by Sri Naresh Kr. Chakraborty, Sri Mihir Koley, Sri Joydeb Chatterjee, Sri Samarendra Nath Mukherjee and Sri Subhash Chandra Naskar acknowledging receipt of Rs.2,70,230.33P towards leave encashment for 358 days, Rs.1,71,616/- towards leave encashment for 320 days, Rs.2,62,323.80P towards leave encashment Rs.1,69,630.93P towards leave encashment for 338 days and Rs.2,05,393.60P towards leave encashment for 330 days. It further shows that Rs.4,18,061.54P, Rs.2,97,027.69P, Rs.2,95,836.92P, Rs.1,91,095.38P and Rs.3,05,040/- towards gratuity to them on 30-12-2011, 31-01-2012, 29-06-2012 and on 31-12-2011.
5. Copy of retirement notices dt. 13-10-2011 addressed to Sri Naresh Kr. Chakraborty, Employee no.607 and Sri Mihir Koley, Employee No.288, informing them, their date of retirement on 31-12-2011, Copy of retirement notice dt. 22-12-2011 addressed to Sri Joydeb Chatterjee, , informing him, his date of retirement on 31-01-2012, to Sri Samarendra Nath Mukherjee dt.26-04-2012 informing him his date of date of retirement was on 30-06-2012 and copy of retirement notice of retirement dt. 13-10-2011 to Sri Subhash Chandra Naskar informing him his date of retirement to be on 31-12-2011.
6. Copy of Andrew Yule's letter dt. 24-04-2013 to ALC (C), Copy of ALC's letter dt. 05-04-2013 to Andrew Yule & Co. Ltd.
7. Copy of complaint petition of Sri Mihir Koley to RLC dt.02-04-2013,
8. Copy of letters dt.05-10-2011, 30-09-2011, 19-08-2013, 25-07-2013, 10-07-2013 addressed to Jt. Secretary, Heavy Industries and Public Enterprises, Deptt. of Heavy Industry by Andrew Yule & Co. Ltd. regarding revision in respect of age of superannuation from 58 to 60 years and pendency of Industrial Disputes on the date of retirement of the concerned workmen
9. Copy of appointment letter of Sri Naresh Kumar Chakraborty dt.13-08-1978,
10. Copy of confirmation letter dt. 14-02-1980 addressed to Naresh Kr. Chakraborty,
11. Copy of Memorandum of settlement dt. 04-02-2011.
12. Copy of failure reports dt. 17-05-2013 of ALC to Ministry of Labour & Employment.
13. Copy of letter dt. 30-12-2011, 31-01-2012, 28-06-2012 and 30-12-2011 addressed to Sri Naresh Kr. Chakraborty, Sri Mihir Koley, Sri Joydeb Chatterjee, Sri Samarendra Nath Mukherjee and Sri Subhash Chandra Naskar by Andrew Yule & Co. Ltd. disclosing the statement of their deposit in provident fund,
14. Copy of joint petition dt. 06-07-2012 submitted by Sri Naresh Kumar Chakraborty, Sri Subhash Naskar, Sri Mihir Koley, Sri Joydeb Chatterjee and Sri Samarendra Nath Mukherjee to the Director (Personnel), Andrew Yule & Co. Ltd., Kolkata,
15. Copy of letters of Sri Naresh Kr. Chakraborty, Sri Joydeb Chatterjee, Sri Samarendra Nath Mukherjee and Sri Subhash Chandra Naskar dt. 26-11-2012 and 04-02-2013 addressed to the Director (Personnel), Andrew Yule & Co. Ltd.
16. Copy of complaint of Sri Naresh Kr. Chakraborty, Sri Joydeb Chatterjee and Sri Subhash Chandra Naskar to R.L.C, Kolkata dt.30-11-2012 and on 02-04-2013,
17. Copy of letter of Andrew Yule & Co. Ltd. dt. 18-02-2013, 24-04-2013 to ALC(C), Kolkata,
18. Copy of letters dt. 10-07-2013, 05-10-2011 of Andrew Yule & Co. Ltd. to Ministry of Heavy Industries & Public Enterprises , Govt. of India,
19. Copy of notice of retirement dt. 13-10-2011 issued by Andrew Yule & Co. Ltd. to Sri Naresh Ch. Chakraborty,
20. Copy of administrative circular dt. 01-03-2012 issued by Andrew Yule & Co. Ltd.
21. Copy of wage policy of Board Level posts and below Board Level posts including non-unionised Supervisors in Public Sector Enterprises w.e.f. 01-01-1997,
22. Copy of letter dt. 26-11-2008 of Ministry of Heavy Industries & Public Enterprises, Deptt. of Public Enterprises with regard to revision of scales of pay w.e.f. 01-01-2007 in respect of Board Level and below Board Level Executives and non-unionised Supervisors,
23. Office memorandum dt.19-07-2007, 20-04-2007 and 26-11-2008 of Ministry of Heavy Industries,
24. Copy of wage policy w.e.f. 01-01-1997,
25. Copy of appointment letter of Sri Joydeb Chatterjee dt. 28-08-1987,
26. Administrative circular dt. 01-03-2012 issued by Andrew Yule & Co. Ltd. increasing the age of retirement from 58 to 60 years only to Board Level and below Board Level and Assistance and not to the other categories of its employees,

27. Copy of letter dt.03-11-2011 of Ministry of Heavy Industries to Chairman, Andrew Yule & Co. Ltd.
28. Copy of petition dt.12-12-2011 of Sir Subhash Chandra Naskar for payment of his P.F. due before 31-12-2011 i.e. prior to his date of superannuation addressed to the Trustee Andrew Yule & Co. Ltd.
29. Copy of ALC's letter dt.05-04-2013 to Sir Subhash Chandra Naskar.

Both sides have also filed their written notes of arguments.

Gone through the oral evidence of all the workmen and that of management witness Mr. Satyendra Kumar Pandey filed in the form of affidavit as well as that have been recorded by the Tribunal along with the documents that have been filed by workmen and management and from where it appears the only issue that need to be decided in the present five reference cases is "whether the age of superannuation of concerned workmen in the category of Typist, Clerk, Driver, and Durwan of Andrew Yule Co. Ltd. posted at Head Office, Kolkata was 58 years or 60 years as claimed by them"?

The appointment letters and confirmation letters of those five workmen which have come on record do not disclose what their age of superannuation was at the time of joining the establishment of Andrew Yule & Co. Ltd. However, M.W.1 in his evidence recorded by the Tribunal under oath has admitted that when those five workmen joined the establishment of Andrew Yule & Co. Ltd., their age of superannuation was 60 years. Further, both sides have admitted that when Central Public Sector Enterprises were declare sick, then Cabinet roll back the age of superannuation of the employees of such sick CPSEs from 60 years to 58 years in respect of all categories of employees duly approved by the Board of Directors of such CPSEs in the month of August, 2001. Such decision was reviewed in April, 2005 and decided to enhance the age of retirement from 58 to 60 years only in respect of those employees working in those CPSEs who have started making profit for last three years continuously with positive net worth for last three years as per annual audited report, that CPSEs did not avail any budgetary support during the last three years and who will not avail budgetary support in future and left the decision for the Board of Directors of the CPSE concerned.

Further, the exhibited documents show that Ministry of Heavy Industries by issuing memo no. 10(23)/2011-PE1 dt.03-11-2011 allowed Andrew Yule & Co. Ltd. to enhance the retirement age from 58 to 60 years only in respect of Board Level, below Board Level and those employees who comes within the purview of DPE guidelines, but not to those employees who are governed by Industrial Employment (Standing Orders) Act, 1946 or Plantation Labour Act, 1951. Therefore, here it is necessary to find out who are the employees who fall in the category of Board Level, Below Board Level and those governed by Industrial Employment (Standing Orders) Act, 1946 or Plantation Labour Act, 1951.

It is undisputed fact Andrew Yule & Co. Ltd., a Central Govt. Public Sector Enterprise/Undertaking under the ownership of Heavy Industries, Govt. of India. The majority of products and service offered by it and its subsidiaries are related to heavy industry and engineering and it also owns tea gardens/ tea estates including Hooghly Printing. It comes within the definition of an industry as defined in section 2(j) of The Industrial Disputes Act, 1947 as the establishment where more than 50 employees are engaged. Further, in view of provisions of section 2 (s) any person working in such industry and employed to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward and those Supervisors who draw less than Rs.10,000/- per month and who does not discharge managerial nature of job comes within the definition of workman. The Industrial Employment (Standing Orders) Act, 1946 applies to employees in industrial establishment with 50 or more employees. The Act regulates the condition of employment for these employees.

It is a matter of common sense, a person holding Board Level position in a Public or Private Sector Undertakings indicate such person who holds the position such as Chief Executive Officer, Managing Director, or such person who takes decision on behalf of the Corporation or the person who holds highest level of hierarchy in any organisation or who are part of the Board of Directors of the company.

A Below Board Level employee is an employee in Central Public Sector Enterprises who is not a member of Board of Directors but who holds managerial post and those who do not come within the definition of workman as provided in section 2(s) of Industrial Disputes Act, 1947.

The present five persons being employees of Andrew Yule & Co. Ltd. in the capacity of Clerk, Typist, Driver and Durwan squarely falls within the definition of workman. It is also admitted by all those workmen in their cross examination that they are the members of Andrew Yule & Co. Ltd. (Calcutta Region) Workmen's Union i.e. unionised employees.

It has also come on record that there was a settlement between the different unions of Andrew Yule & Co. Ltd. and the management before the Regional Labour Commissioner (Central), Kolkata on 04-02-2011, under provisions of section 12 (3) of the I.D. Act, 1947. It is noted that two of the workmen namely Sri Naresh Chakraborty and Sri Subhas Chandra Naskar, being the Assistant Secretary and Vice President of Andrew Yule & Co. Ltd. and its Group (Calcutta Region) Workmen's Union, were present and were the signatories of the said settlement. By

executing such settlement it was agreed and settled that the superannuation age of unionised workmen of Andrew Yule & Co. Ltd. will be 58 years on and from the closing of business of the last working day of the English Calendar month in which the incumbent attains the age of superannuation in terms of his/her date of birth recorded, admitted and incorporated at the end of the Company at the time of commencement of employment is a Service Condition/ terms for employment for all practical purposes and for all times to come in supersession/ cancellation/ abrogation/ discontinuance of all past practices, systems, procedures, circulars, notices, orders, understanding, settlement/s etc. However, Orders from the Ministry, if any, to be complied with. Provisions in respect of retirement age as contained in the Standard Office Procedure applicable for staff and sub-ordinate staff placed at the Registered Office of the Company stands superseded for all practical purpose.

Permanent employees appointed on any date prior to September 01, 1984, will retire and accordingly the contract of employment by an between the Company and the concerned employee will stand terminated on attaining the age of superannuation i.e. 58 years in terms of the date of birth recorded, admitted and incorporated at the end of the Company at the time of commencement of employment on and from the closing of business of last working day of the English calendar year the incumbent attains the age of superannuation. However, in case there is a change in the age of superannuation, the concerned employees will retire on and from the closing of business of the last working day of the English calendar month in he or she attains the age of superannuation according to the date of birth recorded, admitted and incorporated at the end of the Company at the time of commencement of employment provided the date of birth is other than 1st day of the English calendar month. In case, the date of birth is 1st day of the English calendar month the incumbent will retire and accordingly the contract of employment by and between the company and the concerned employee will stand terminated on and from the closing of business of the last working day of the previous calendar month. Date of birth in respect of each permanent employee/ workman recorded, admitted and incorporated at the end of the company at the time of commencement of employment shall remain unaltered for all practical purposes for all times to come.

It is true that Ministry of Heavy Industry by issuing memo no. 10(23)/2011-PE1 dt. 03-11-2011 had enhanced the retirement age of the employees of Andrew Yule & Co. Ltd. i.e. after the execution of the above settlement on 04-02-2011, but the above memo of Ministry of Heavy Industries has clearly provided that retirement age of Board Level, Below Board Level employees and those employees who are governed by DPE guidelines would be enhanced from 58 to 60 years but such benefit was not extended to those employees of Andrew Yule & Co. Ltd. governed by Industrial Employment(Standing Order) Act, 1946 and Plantation Labour Act, 1951.

Further, Andrew Yule Co. Ltd. by issuing an administrative circular no. 2012/07 dt. 01-03-2012 in pursuance of memo no. 10(23)/2011-PE1 dt. 03-11-2011 issued by Ministry of Heavy Industries had extended the benefit of enhancement of age of retirement only to the Board Level, Below Board Level Officers and Assistance on the Roll of the company and not to any other categories of employees of the company.

The present set of workmen not being Board Level, Below Board Level or Assistance, but who belong to the category of workman as defined in section 2(s) of I.D. Act, being unionised employees bounded by tripartite settlement dt. 04-02-20211 and employees governed by Industrial Employment (Standing Orders) Act, 1946 are not covered by the benefit of memo no. 10(23)/2011-PE1 dt. 03-11-2011.

Further, nothing has come on record to show that legality of memo no. 10(23)/2011-PE1 dt. 03-11-2011 issued by Ministry of Heavy Industries and the Administrative Circular no. 2012/07 dt. 01-03-2012, issued by Andrew Yule Co. Ltd. were challenged by the present set of workmen or by any employees of Andrew Yule & Co. Ltd. before any Court of Law. Thus, as per unchallenged memo dt. 03-11-2011 of Ministry of Heavy Industries and the administrative circular no. 2012/07 dt. 01-03-2012 issued by Andrew Yule Co. Ltd., the present set of workmen have no locustandi to claim benefit of memo dt.03-11-2011 of Ministry of Heavy Industries and Administrative Circular dt.01-03-2012, which exclude them from benefit of enhanced age of retirement being workman category of employees.

Further, the workmen have failed to produce any subsequent settlement executed between the management of Andrew Yule & Co. Ltd. and unions, extending the benefits of memo no. 10(23)/2011-PE1 dt. 03-11-2011 and the administrative circular no. 2012/07 dt. 01-03-2012 issued by Andrew Yule Co. Ltd., superseding the settlement dt. 04-02-2011, where the retirement age of the workman category employees of Andrew Yule & Co. Ltd. was fixed at 58 years and by which they are bounded.

That apart, from the above mentioned exhibited documents, it is seen that all the five workmen were served with notice of their retirement 2/3 months prior to their actual retirement on their attaining age of 58 years by the company. It has come on record that none of those workmen who retired after December, 2011 have raised any objection against notices of retirement served upon them alleging that their retirement age was already enhanced to 60 years by virtue of memo no. 10(23)/2011-PE1 dt. 03-11-2011 issued by Ministry of Heavy Industries. It is very interesting to note that all workmen have accepted their retirement on attaining the age of 58 years without any qualms and by withdrawing their Provident Fund, accepting leave encashment and gratuity from the management of Andrew Yule & Co. Ltd. on the day they retired from the service. Then, a question may arise, how a workman who has received provident fund, leave encashment and gratuity from the employer can raise a dispute alleging that they

have been illegally retrenched /terminated from the service by the employer on their attaining the age of 58 years as contended by them in their claim statements or their retirement was premature as contained in order of reference.

Further, those five workmen have failed to produce any official record and other independent witnesses to prove and corroborate that employees of Andrew Yule & Co. Ltd. in the category of unionised workman posted at Head Office were extended the benefit of memo no. 10(23)/2011-PE1 dt. 03-11-2011 issued by Ministry of Heavy Industries, post their retirement and as shown by them in their self-prepared list and which have been exhibited by them.

In view of the above discussion, this Tribunal is of view all the five workmen being unionised workmen, governed and bounded by the tripartite settlement executed in between the management and unions on 04-02-2011. They being employee in the category of a workman as defined in section 2(s) of Industrial Disputes Act, and governed by Industrial Employment (Standing Orders) Act, 1946 are not entitled to get the benefit of memo no. 10(23)/2011-PE1 dt. 03-11-2011 issued by Ministry of Heavy Industries and which has been given effect only to Board Level, Below Board Level and Assistance by Andrew Yule & Co. Ltd. by issuing administrative circular no. 2012/07 dt. 01-03-2012. Further, all workmen who have honourably acknowledged their age of superannuation on completion of age of 58 years and who have withdrawn all their deposit in provident fund and accepted leave encashment and gratuity from the employer, the day they superannuated from the service are barred by the principle of estoppel and acquiescence in raising the dispute alleging that they have been prematurely terminated from their services. In fact, this Tribunal holds the dispute raised by all the five employees claiming termination by way of premature retirement without extending the benefit of memo no. 10(23)/2011-PE1 dt. 03-11-2011 issued by Ministry of Heavy Industries to be speculative.

Hence, this Tribunal holds the claims of all five workmen are not maintainable. Accordingly Reference No. 36 of 2013, Reference No. 37 of 2013, Reference No.38 of 2013, Reference No. 39 of 2013 and Reference No. 43 of 2013 in respect of ex-workmen namely Sri Naresh Kumar Chakraborty, Sri Mihir Koley, Sri Joydeb Chatterjee, Sri Samarendra Nath Mukherjee, and Sri Subhas Chandra Naskar of Andrew Yule & Co. Ltd. are dismissed and an award to that effect is passed.

Justice K. D. BHUTIA, Presiding Officer

नई दिल्ली, 11 फरवरी, 2025

का.आ. 187.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एंड्रयू यूल एंड कंपनी लिमिटेड, के प्रबंधन के संबद्ध नियोजकों और श्री नरेश कुमार चक्रवर्ती, कामगार, के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण-सह-श्रम न्यायालय, कोलकाता, पंचाट(संदर्भ संख्या **REF. No. 36 OF 2013**) को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 11.02.2025 को प्राप्त हुआ था।

[सं. एल – 42011/103/2013-आईआर (डीयू)]

दिलीप कुमार, अवर सचिव

New Delhi, the 11th February, 2025

S.O. 187.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. **NO. 36 OF 2013**) of the **Central Government Industrial Tribunal cum Labour Court, Kolkata**, as shown in the Annexure, in the Industrial dispute between the employers in relation to **Andrew Yule & Company Limited, and Shri Naresh Kumar Chakraborty, Worker**, which was received along with soft copy of the award by the Central Government on 11.02.2025.

[No. L-42011/103/2013-IR (DU)]

DILIP KUMAR, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT KOLKATA

Present : Justice K. D. Bhutia, Presiding Officer.

REF. NO. 36 OF 2013

REF. NO. 37 OF 2013

REF. NO. 38 OF 2013

REF. NO. 39 OF 2013 AND

REF. NO. 43 OF 2013**Parties :** Employers in relation to the management of**Andrew Yule & Company Limited****VS**

- 1. Sri Naresh Kumar Chakraborty,**
- 2. Sri Mihir Koley,**
- 3. Sri Joydeb Chatterjee,**
- 4. Sri Samarendra Nath Mukherjee, and**
- 5. Sri Subhas Chandra Naskar**

Appearance:

On behalf Andrew Yule & Company Limited: Mr. Sushil Kumar Karmakar, Ld. Advocate.

On behalf of Five workmen: Mr. Saibal Mukherjee, Ld. Advocate.

Dated: 21st January, 2025**AWARD**

This common award disposes all the above mentioned five reference cases as issues involved in all those cases are exactly same and parties are five workmen who have alleged to have been illegally terminated from their permanent regular service by their employer Andrew Yule & Co. Ltd., on their attaining the age of 58 years.

The Central Government, Ministry of Labour vide Order Nos. L-42011/103/2013 –IR(DU) dated 25-07-2013; No.L-42011/102/2013-IR(DU) dt.25-07-2013; No. L-42011/101/2013-IR (DU) dt. 25-07-2013; No. L-42011/100/2013-IR (DU) dt.29-07-2013 and No L-42012/59/2013-IR (DU) dt. 12-09-201, in exercise of power conferred sub-section 1(d) and sub-section 2(A) of section 10 of Industrial Dispute Act, 1947 has referred the following disputes to this Tribunal for adjudication:-

1. (Ref. 36/2013)

“Whether the action of the management of Andrew Yule & Company Limited in terminating the service of Sri **Naresh Kumar Chakraborty** w.e.f. 01-01-2012 by way of premature retirement without extending the benefit of enhanced age of superannuation from 58 to 60 years and implementing the orders of the Ministry of Heavy Industries & Public Enterprises, Dept. of Heavy Industries, Govt. of India vide memo no.10 (23)/2011-PEI dated 03-11-2011, with immediate effect is legal and justified? To what relief the workman is entitled to?”

2. (Ref. 37/2013)

“Whether the action of the management of Andrew Yule & Company Limited in terminating the service of Sri **Mihir Koley** w.e.f. 01-01-2012 by way of premature retirement without extending the benefit of enhanced age of superannuation, from 58 to 60 years and implementing the orders of the Ministry of Heavy Industries & Public Enterprises, Dept. of Heavy Industries, Govt. of India vide memo no. 10(23)/2011-PEI dated 03-11-2011, with immediate effect is legal and justified? To what relief the workman is entitled to?”

3. (Ref. 38/2013)

“Whether the action of the management of Andrew Yule & Company Limited in terminating the service of Sri **Joydeb Chatterjee** w.e.f. 01-02-2012 by way of premature retirement without extending the benefit of enhanced age of superannuation, from 58 to 60 years and implementing the orders of the Ministry of Heavy Industries & Public Enterprises, Dept. of Heavy Industries, Govt. of India vide memo no. 10(23)/2011-PEI dated 03-11-2011, with immediate effect is legal and justified? To what relief the workman is entitled to?”

4. (Ref. 39/2013)

“Whether the action of the management of Andrew Yule & Company Limited in terminating the service of Sri **Samarendra Nath Mukherjee** w.e.f. 01-07-2012 by way of premature retirement without extending the benefit of enhanced age of superannuation, from 58 to 60 years and implementing the orders of the Ministry of Heavy Industries & Public Enterprises, Dept. of Heavy Industries, Govt. of India vide memo no. 10(23)/2011-PEI dated 03-11-2011, with immediate effect is legal and justified? To what relief the workman is entitled to?”

5. (Ref. 43/2013)

“Whether the action of the management of Andrew Yule & Company Limited in terminating the service of Sri **Subhas Chandra Naskar** w.e.f. 01-01-2012 by way of premature retirement without extending the benefit of

enhanced age of superannuation, from 58 to 60 years and implementing the orders of the Ministry of Heavy Industries & Public Enterprises, Dept. of Heavy Industries, Govt. of India vide memo no. 10(23)/2011-PEI dated 03-11-2011, with immediate effect is legal and justified? To what relief the workman is entitled to?"

That contents of their separate claim statements appear to be exactly same save and except their date of joining, category of service to which they joined the establishment of Andrew Yule & Co. Ltd., their date of birth and their date of superannuation.

Sri Naresh Kumar Chakraborty, in his written statement has alleged that he joined the establishment of Andrew Yule & Co. Ltd. as a clerical staff (Typist) on 16-08-1979 on probation and later his service was confirmed on 16-02-1980 and all along he was posted at Head Office at Kolkata.

Sri Mihir Koley, in his written statement has alleged that he joined the establishment of Andrew Yule & Co. Ltd. as a Subordinate Staff (Driver) on 20-03-1980 on probation and later his service was confirmed on 20-09-1980 and all along he was posted at Head Office at Kolkata.

Sri Joydeb Chatterjee, in his written statement has alleged that he joined the establishment of Andrew Yule & Co. Ltd. as a Typist on 01-09-1987 and all along he was posted at Head Office at Kolkata.

Sri Samarendra Nath Mukherjee, in his written statement has alleged that he joined the establishment of Andrew Yule & Co. Ltd. as a Durwan on 05-07-1990 and all along he was posted at Head Office at Kolkata, and

Sri Subhas Chandra Naskar, in his written statement has alleged that he joined the establishment of Andrew Yule & Co. Ltd. as a Clerk on 01-10-1985 and all along he was posted at Head Office at Kolkata.

However, they all have alleged that when they joined the establishment of Andrew Yule & Co. Ltd., their age of superannuation was fixed at 60 years. That company was declared as a sick industry in the year 2001 and as such their age of superannuation was rolled to 58 years with the approval of the Cabinet.

But later, Central Govt. had taken a decision to increase the age of superannuation of Board Level and Below Board Level employees of Central Public Sector Enterprise from 58 years to 60 years vide D.P.E. O.M. No. 18 (6)/98 –GM-GL-002 dated 19-05-1998.

Further, when the sick CPSEs started making profit after 2004, then those CPSEs requested the concerned Ministry/Department to enhance the age of superannuation of its employees from 58 years to 60 years. That D.P.E. approved the proposal to enhance the age of superannuation from 58 to 60 years on fulfilment of certain conditions by issuing memorandum No. 18(1) / 2007- GM-GL-80 dated 20-04-2007.

On receiving such memorandum Board of Directors of Andrew Yule & Co. Ltd. called a meeting on 27-07-2011 and decided to enhance the age of superannuation of its all employees from 58 to 60 years and sent a proposal to that effect before Dept. of Heavy Industries, Govt. of India for approval of proposal w.e.f. 01-04-2011. Further, the management sent a proposal letter no. AY/CMD /31 dated 03-08-2011 to the Dept. of Heavy Industries, Ministry of Heavy Industries and Public Enterprises, for enhancement of retirement age of its all employees from 58 to 60 years. That management further vide letters dt. 30-09-2011 and 05-10-2011 to the Ministry of Heavy Industries, appraised that enhancement of age of retirement from 58 to 60 years will not be applicable to the unionised employees in the workmen category placed at the tea garden of the company and who are governed by Plantation Labour Act, 1951 and workmen placed at the factories of the company, who are governed by the Industrial Employment (Standing Orders) Act, 1946.

Accordingly, Ministry of Heavy Industries and Public Enterprises, Deptt. of Heavy Industry vide memo no. 10(23)/-2011/PE.1 dated 03-11-2011, accorded approval for enhancement of the retirement age from 58 years to 60 years in respect of Board and Below Board Level and employees of Andrew Yule & Co. Ltd. governed by DPE guidelines with immediate effect. But such enhancement will not be applicable to the employees of Andrew Yule & Co. Ltd. who are governed by Industrial Employment (Standing Orders) Act, 1946 or Plantation Labour Act, 1951. On receiving such memo, the management of Andrew Yule & Co. Ltd. issued an Administrative Circular No. 2012/07 dated 01-03-2012 enhancing the age of retirement from 58 to 60 years for the Board Level and below Board Level Officer and Assistances on the Roll of the company on or after 03-11-2011.

Now, all the five workmen have alleged that all along they were posted at the Head Office of Andrew Yule & Co. Ltd. at Kolkata and which is governed by West Bengal Shops & Establishment Act and DPE guidelines. The Head Office is neither a tea garden governed by Plantation Labour Act, 1951 nor a Factory being governed by the Industrial Employment (Standing Orders) Act, 1946. It has also been alleged that there was a tripartite settlement dated 04-02-2011 under Industrial Disputes Act, 1947 in between the management of Andrew Yule & Co. Ltd. and its workmen posted at the Head Office for compliance of retirement age fixed by the Ministry.

They have alleged that in violations of memo no. 10(23)/-2011/PE.1 dated 03-11-2011 issued by Ministry of Heavy Industries and Public Enterprises, Dept. of Heavy Industry, they have been retrenched from their respective services on their attaining the of 58 years. That they have raised objection in writing against their premature

retirement before the management of Andrew Yule & Co. Ltd. in the year 2012 itself but of no avail. Then they made a complaint before the Regional Labour Commissioner (Central), Kolkata, but who failed to resolve their dispute and referred their matter to the Ministry for making reference before Industrial Tribunal.

That they have alleged that due to premature retirement they have suffered financial loss and they have claimed the losses suffered due to premature retirement and other consequential financial benefits.

The management of Andrew Yule & Co. Ltd. contested the claim of all those five workmen by filing five separate written statements and where it has taken the same stand and alleged that all those five workmen were members of Andrew Yule & Co. Ltd. Workmen's Union (Calcutta Region) and they being unionised employees of the company are governed by tripartite settlement or bipartite settlement executed from the closing of business of the last working day of the previous calendar month. Date of birth in respect of each permanent employee/ workman recorded, admitted and incorporated at the end of the company at the time of commencement of employment shall remain unaltered for all practical purposes for all times to come.

It is true that Ministry of Heavy Industry by issuing memo no. 10(23)/2011-PE1 dt. 03-11-2011 had enhanced the retirement age of the employees of Andrew Yule & Co. Ltd. i.e. after the execution of the above settlement on 04-02-2011, but the above memo of Ministry of Heavy Industries has clearly provided that retirement age of Board Level, Below Board Level employees and those employees who are governed by DPE guidelines would be enhanced from 58 to 60 years but such benefit was not extended to those employees of Andrew Yule & Co. Ltd. governed by Industrial Employment(Standing Order) Act, 1946 and Plantation Labour Act, 1951.

Further, Andrew Yule Co. Ltd. by issuing an administrative circular no. 2012/07 dt. 01-03-2012 in pursuance of memo no. 10(23)/2011-PE1 dt. 03-11-2011 issued by Ministry of Heavy Industries had extended the benefit of enhancement of age of retirement only to the Board Level, Below Board Level Officers and Assistance on the Roll of the company and not to any other categories of employees of the company.

The present set of workmen not being Board Level, Below Board Level or Assistance, but who belong to the category of workman as defined in section 2(s) of I.D. Act, being unionised employees bounded by tripartite settlement dt. 04-02-2011 and employees governed by Industrial Employment (Standing Orders) Act, 1946 are not covered by the benefit of memo no. 10(23)/2011-PE1 dt. 03-11-2011.

Further, nothing has come on record to show that legality of memo no. 10(23)/2011-PE1 dt. 03-11-2011 issued by Ministry of Heavy Industries and the Administrative Circular no. 2012/07 dt. 01-03-2012, issued by Andrew Yule Co. Ltd. were challenged by the present set of workmen or by any employees of Andrew Yule & Co. Ltd. before any Court of Law. Thus, as per unchallenged memo dt. 03-11-2011 of Ministry of Heavy Industries and the administrative circular no. 2012/07 dt. 01-03-2012 issued by Andrew Yule Co. Ltd., the present set of workmen have no locustandi to claim benefit of memo dt.03-11-2011 of Ministry of Heavy Industries and Administrative Circular dt.01-03-2012, which exclude them from benefit of enhanced age of retirement being workman category of employees.

Further, the workmen have failed to produce any subsequent settlement executed between the management of Andrew Yule & Co. Ltd. and unions, extending the benefits of memo no. 10(23)/2011-PE1 dt. 03-11-2011 and the administrative circular no. 2012/07 dt. 01-03-2012 issued by Andrew Yule Co. Ltd., superseding the settlement dt. 04-02-2011, where the retirement age of the workman category employees of Andrew Yule & Co. Ltd. was fixed at 58 years and by which they are bounded.

That apart, from the above mentioned exhibited documents, it is seen that all the five workmen were served with notice of their retirement 2/3 months prior to their actual retirement on their attaining age of 58 years by the company. It has come on record that none of those workmen who retired after December, 2011 have raised any objection against notices of retirement served upon them alleging that their retirement age was already enhanced to 60 years by virtue of memo no. 10(23)/2011-PE1 dt. 03-11-2011 issued by Ministry of Heavy Industries. It is very interesting to note that all workmen have accepted their retirement on attaining the age of 58 years without any qualms and by withdrawing their Provident Fund, accepting leave encashment and gratuity from the management of Andrew Yule & Co. Ltd. on the day they retired from the service. Then, a question may arise, how a workman who has received provident fund, leave encashment and gratuity from the employer can raise a dispute alleging that they have been illegally retrenched /terminated from the service by the employer on their attaining the age of 58 years as contended by them in their claim statements or their retirement was premature as contained in order of reference.

Further, those five workmen have failed to produce any official record and other independent witnesses to prove and corroborate that employees of Andrew Yule & Co. Ltd. in the category of unionised workman posted at Head Office were extended the benefit of memo no. 10(23)/2011-PE1 dt. 03-11-2011 issued by Ministry of Heavy Industries, post their retirement and as shown by them in their self-prepared list and which have been exhibited by them.

In view of the above discussion, this Tribunal is of view all the five workmen being unionised workmen, governed and bounded by the tripartite settlement executed in between the management and unions on 04-02-2011.

They being employee in the category of a workman as defined in section 2(s) of Industrial Disputes Act, and governed by Industrial Employment (Standing Orders) Act, 1946 are not entitled to get the benefit of memo no. 10(23)/2011-PE1 dt. 03-11-2011 issued by Ministry of Heavy Industries and which has been given effect only to Board Level, Below Board Level and Assistance by Andrew Yule & Co. Ltd. by issuing administrative circular no. 2012/07 dt. 01-03-2012. Further, all workmen who have honourably acknowledged their age of superannuation on completion of age of 58 years and who have withdrawn all their deposit in provident fund and accepted leave encashment and gratuity from the employer, the day they superannuated from the service are barred by the principle of estoppel and acquiescence in raising the dispute alleging that they have been prematurely terminated from their services. In fact, this Tribunal holds the dispute raised by all the five employees claiming termination by way of premature retirement without extending the benefit of memo no. 10(23)/2011-PE1 dt. 03-11-2011 issued by Ministry of Heavy Industries to be speculative.

Hence, this Tribunal holds the claims of all five workmen are not maintainable. Accordingly Reference No. 36 of 2013, Reference No. 37 of 2013, Reference No.38 of 2013, Reference No. 39 of 2013 and Reference No. 43 of 2013 in respect of ex-workmen namely Sri Naresh Kumar Chakraborty, Sri Mihir Koley, Sri Joydeb Chatterjee, Sri Samarendra Nath Mukherjee, and Sri Subhas Chandra Naskar of Andrew Yule & Co. Ltd. are dismissed and an award to that effect is passed.

Justice K. D. BHUTIA, Presiding Officer

नई दिल्ली, 11 फरवरी, 2025

का.आ. 188.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एंड्रयू यूल एंड कंपनी लिमिटेड, के प्रबंधन के संबद्ध नियोजकों और श्री सुभाष चंद्र नस्कर, कामगार, के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण-सह-श्रम न्यायालय, कोलकाता, पंचाट (संदर्भ संख्या **REF. No. 43 OF 2013**) को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 11.02.2025 को प्राप्त हुआ था।

[सं. एल – 42012/59/2013-आईआर (डीयू)]

दिलीप कुमार, अवर सचिव

New Delhi, the 11th February, 2025

S.O. 188.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. **NO. 43 OF 2013**) of the **Central Government Industrial Tribunal cum Labour Court, Kolkata**, as shown in the Annexure, in the Industrial dispute between the employers in relation to **Andrew Yule & Company Limited, and Shri Subhas Chandra Naskar, Worker**, which was received along with soft copy of the award by the Central Government on 11.02.2025.

[No. L-42012/59/2013-IR (DU)]

DILIP KUMAR, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT KOLKATA

Present : Justice K. D. Bhutia, Presiding Officer.

REF. NO. 36 OF 2013

REF. NO. 37 OF 2013

REF. NO. 38 OF 2013

REF. NO. 39 OF 2013 AND

REF. NO. 43 OF 2013

Parties : Employers in relation to the management of

Andrew Yule & Company Limited

VS

1. Sri Naresh Kumar Chakraborty,
2. Sri Mihir Koley,
3. Sri Joydeb Chatterjee,
4. Sri Samarendra Nath Mukherjee, and
5. Sri Subhas Chandra Naskar

Appearance:

On behalf Andrew Yule & Company Limited: Mr. Sushil Kumar Karmakar, Ld. Advocate.

On behalf of Five workmen: Mr. Saibal Mukherjee, Ld. Advocate.

Dated: 21st January, 2025

AWARD

This common award disposes all the above mentioned five reference cases as issues involved in all those cases are exactly same and parties are five workmen who have alleged to have been illegally terminated from their permanent regular service by their employer Andrew Yule & Co. Ltd., on their attaining the age of 58 years.

The Central Government, Ministry of Labour vide Order Nos. L-42011/103/2013 –IR(DU) dated 25-07-2013; No.L-42011/102/2013-IR(DU) dt.25-07-2013; No. L-42011/101/2013-IR (DU) dt. 25-07-2013; No. L-42011/100/2013-IR (DU) dt.29-07-2013 and No L-42012/59/2013-IR (DU) dt. 12-09-201, in exercise of power conferred sub-section 1(d) and sub-section 2(A) of section 10 of Industrial Dispute Act, 1947 has referred the following disputes to this Tribunal for adjudication:-

1. (Ref. 36/2013)

“Whether the action of the management of Andrew Yule & Company Limited in terminating the service of Sri **Naresh Kumar Chakraborty** w.e.f. 01-01-2012 by way of premature retirement without extending the benefit of enhanced age of superannuation from 58 to 60 years and implementing the orders of the Ministry of Heavy Industries & Public Enterprises, Dept. of Heavy Industries, Govt. of India vide memo no.10 (23)/2011-PEI dated 03-11-2011, with immediate effect is legal and justified? To what relief the workman is entitled to?”

2. (Ref. 37/2013)

“Whether the action of the management of Andrew Yule & Company Limited in terminating the service of Sri **Mihir Koley** w.e.f. 01-01-2012 by way of premature retirement without extending the benefit of enhanced age of superannuation, from 58 to 60 years and implementing the orders of the Ministry of Heavy Industries & Public Enterprises, Dept. of Heavy Industries, Govt. of India vide memo no. 10(23)/2011-PEI dated 03-11-2011, with immediate effect is legal and justified? To what relief the workman is entitled to?”

3. (Ref. 38/2013)

“Whether the action of the management of Andrew Yule & Company Limited in terminating the service of Sri **Joydeb Chatterjee** w.e.f. 01-02-2012 by way of premature retirement without extending the benefit of enhanced age of superannuation, from 58 to 60 years and implementing the orders of the Ministry of Heavy Industries & Public Enterprises, Dept. of Heavy Industries, Govt. of India vide memo no. 10(23)/2011-PEI dated 03-11-2011, with immediate effect is legal and justified? To what relief the workman is entitled to?”

4. (Ref. 39/2013)

“Whether the action of the management of Andrew Yule & Company Limited in terminating the service of Sri **Samarendra Nath Mukherjee** w.e.f. 01-07-2012 by way of premature retirement without extending the benefit of enhanced age of superannuation, from 58 to 60 years and implementing the orders of the Ministry of Heavy Industries & Public Enterprises, Dept. of Heavy Industries, Govt. of India vide memo no. 10(23)/2011-PEI dated 03-11-2011, with immediate effect is legal and justified? To what relief the workman is entitled to?”

5. (Ref. 43/2013)

“Whether the action of the management of Andrew Yule & Company Limited in terminating the service of Sri **Subhas Chandra Naskar** w.e.f. 01-01-2012 by way of premature retirement without extending the benefit of enhanced age of superannuation, from 58 to 60 years and implementing the orders of the Ministry of Heavy Industries & Public Enterprises, Dept. of Heavy Industries, Govt. of India vide memo no. 10(23)/2011-PEI dated 03-11-2011, with immediate effect is legal and justified? To what relief the workman is entitled to?”

That contents of their separate claim statements appear to be exactly same save and except their date of joining, category of service to which they joined the establishment of Andrew Yule & Co. Ltd., their date of birth and their date of superannuation.

Sri **Naresh Kumar Chakraborty**, in his written statement has alleged that he joined the establishment of Andrew Yule & Co. Ltd. as a clerical staff (Typist) on 16-08-1979 on probation and later his service was confirmed on 16-02-1980 and all along he was posted at Head Office at Kolkata.

Sri **Mihir Koley**, in his written statement has alleged that he joined the establishment of Andrew Yule & Co. Ltd. as a Subordinate Staff (Driver) on 20-03-1980 on probation and later his service was confirmed on 20-09-1980 and all along he was posted at Head Office at Kolkata.

Sri **Joydeb Chatterjee**, in his written statement has alleged that he joined the establishment of Andrew Yule & Co. Ltd. as a Typist on 01-09-1987 and all along he was posted at Head Office at Kolkata.

Sri Samarendra Nath Mukherjee, in his written statement has alleged that he joined the establishment of Andrew Yule & Co. Ltd. as a Durwan on 05-07-1990 and all along he was posted at Head Office at Kolkata, and

Sri Subhas Chandra Naskar, in his written statement has alleged that he joined the establishment of Andrew Yule & Co. Ltd. as a Clerk on 01-10-1985 and all along he was posted at Head Office at Kolkata.

However, they all have alleged that when they joined the establishment of Andrew Yule & Co. Ltd., their age of superannuation was fixed at 60 years. That company was declared as a sick industry in the year 2001 and as such their age of superannuation was rolled to 58 years with the approval of the Cabinet.

But later, Central Govt. had taken a decision to increase the age of superannuation of Board Level and Below Board Level employees of Central Public Sector Enterprise from 58 years to 60 years vide D.P.E. O.M. No. 18 (6)/98 –GM-GL-002 dated 19-05-1998.

Further, when the sick CPSEs started making profit after 2004, then those CPSEs requested the concerned Ministry/Department to enhance the age of superannuation of its employees from 58 years to 60 years. That D.P.E. approved the proposal to enhance the age of superannuation from 58 to 60 years on fulfilment of certain conditions by issuing memorandum No. 18(1) / 2007- GM-GL-80 dated 20-04-2007.

On receiving such memorandum Board of Directors of Andrew Yule & Co. Ltd. called a meeting on 27-07-2011 and decided to enhance the age of superannuation of its all employees from 58 to 60 years and sent a proposal to that effect before Dept. of Heavy Industries, Govt. of India for approval of proposal w.e.f. 01-04-2011. Further, the management sent a proposal letter no. AY/CMD /31 dated 03-08-2011 to the Dept. of Heavy Industries, Ministry of Heavy Industries and Public Enterprises, for enhancement of retirement age of its all employees from 58 to 60 years. That management further vide letters dt. 30-09-2011 and 05-10-2011 to the Ministry of Heavy Industries, appraised that enhancement of age of retirement from 58 to 60 years will not be applicable to the unionised employees in the workmen category placed at the tea garden of the company and who are governed by Plantation Labour Act, 1951 and workmen placed at the factories of the company, who are governed by the Industrial Employment (Standing Orders) Act, 1946.

Accordingly, Ministry of Heavy Industries and Public Enterprises, Deptt. of Heavy Industry vide memo no. 10(23)/-2011/PE.1 dated 03-11-2011, accorded approval for enhancement of the retirement age from 58 years to 60 years in respect of Board and Below Board Level and employees of Andrew Yule & Co. Ltd. governed by DPE guidelines with immediate effect. But such enhancement will not be applicable to the employees of Andrew Yule & Co. Ltd. who are governed by Industrial Employment (Standing Orders) Act, 1946 or Plantation Labour Act, 1951. On receiving such memo, the management of Andrew Yule & Co. Ltd. issued an Administrative Circular No. 2012/07 dated 01-03-2012 enhancing the age of retirement from 58 to 60 years for the Board Level and below Board Level Officer and Assistances on the Roll of the company on or after 03-11-2011.

Now, all the five workmen have alleged that all along they were posted at the Head Office of Andrew Yule & Co. Ltd. at Kolkata and which is governed by West Bengal Shops & Establishment Act and DPE guidelines. The Head Office is neither a tea garden governed by Plantation Labour Act, 1951 nor a Factory being governed by the Industrial Employment (Standing Orders) Act, 1946. It has also been alleged that there was a tripartite settlement dated 04-02-2011 under Industrial Disputes Act, 1947 in between the management of Andrew Yule & Co. Ltd. and its workmen posted at the Head Office for compliance of retirement age fixed by the Ministry.

They have alleged that in violations of memo no. 10(23)/-2011/PE.1 dated 03-11-2011 issued by Ministry of Heavy Industries and Public Enterprises, Dept. of Heavy Industry, they have been retrenched from their respective services on their attaining the of 58 years. That they have raised objection in writing against their premature retirement before the management of Andrew Yule & Co. Ltd. in the year 2012 itself but of no avail. Then they made a complaint before the Regional Labour Commissioner (Central), Kolkata, but who failed to resolve their dispute and referred their matter to the Ministry for making reference before Industrial Tribunal.

That they have alleged that due to premature retirement they have suffered financial loss and they have claimed the losses suffered due to premature retirement and other consequential financial benefits.

The management of Andrew Yule & Co. Ltd. contested the claim of all those five workmen by filing five separate written statements and where it has taken the same stand and alleged that all those five workmen were members of Andrew Yule & Co. Ltd. Workmen's Union (Calcutta Region) and they being unionised employees of the company are governed by tripartite settlement or bipartite settlement executed between the management and their unions. They are not governed by D.P.E. guidelines. That there was tripartite settlement executed between the management of the company and the unions on 04-02-2011 and where it was settled that retirement age of unionised workmen would be 58 years and they would superannuated on the last working days on their attaining the age of superannuation in terms of their date of birth recorded in their Service Books. Such tripartite settlement was in force at the time of retirement of those employees.

It has also alleged that in Andrew Yule & Co. Ltd. there are four categories of employees namely (1) Officer Category, (2) Non-unionised Staff, who are exclusively governed by DPE guidelines, (3) Unionised Staff other than tea garden employees who are governed by tripartite agreement arrived at the intervention of Labour Commissioner and (4) Tea Garden workers governed by Plantation Labour Act, 1951. That Memo no. 10(23)/ 2011-PE-1 dated 03-11-2011 issued by Ministry of Heavy Industries and Public Enterprise, Govt. of India was/ is applicable to the employees of Andrew Yule & Co. Ltd. who comes within the purview of DPE guidelines and those who were /are Board Level, below Board Level and Assistance and not to those employees who are governed by the Industrial Employment (Standing Orders) Act, 1946, Plantation Labour Act, 1951 and unionised workmen.

Further, it has alleged that all the employees were intimated about the date of their retirement in advance by issuing notices to them. That all those employees on receiving such retirement notices made application for final withdrawal of their provident fund. That they were paid their provident fund, leave encashment and gratuity on the date of their superannuation and which they accepted without any objection and that too by issuing receipts to that effect. So, it has alleged that all five case are barred by principle of acquiescence, estoppel and not maintainable. It has prayed for dismissal of all five reference cases.

The concerned workmen have filed rejoinder and where they have invariably reiterated what they have alleged in their claim statements.

All five workmen to prove their cases have filed their evidence in chief on affidavit. That they have tendered their evidence on affidavit and cross examined by the management of Andrew Yule & Co. Ltd.

The management of Andrew Yule & Co. Ltd too has produced Mr. Satyendra Kumar Pandey, Dy. Manager (Personnel & Administration) as M. W.1 and who was extensively cross examined by all the five workmen.

Parties have produced same set of following documents and which have been marked as exhibits. Following documents have been filed from the side of workmen and exhibited:-

- 1) Appointment letters of Sri Naresh Kumar Chakraborty dt. 13-08-1979 as a Typist, Appointment letters of Sri Mihir Koley dt. 19-03-1980 as a probationer Driver, Sri Joydeb Chatterjee dt. 28-08-1987 as a Typist, Sri Samarendra Nath Mukherjee dt.05-07-1990 as a Durwan and that of Sir Subhash Chandra Naskar dt. 30-09-1985 as a Clerk.
- 2) Confirmation letters dt.14-02-1980 and 12-03-1982 of Sri Naresh Kumar Chakraborty and Sri Mihir Kr. Koley.
- 3) Copy of DPE guidelines dt. 19-05-1998 whereby retirement age of below Board Level employees of Central PSEs was raised from 58 to 60 years but on certain conditions,
- 4) DPE guidelines dt.20-04-2007 whereby retirement age of Board and below Board Level employees of profit earning Central Public Sector Enterprises was enhanced from 58 to 60 years on fulfilment of certain conditions,
- 5) Extract of minutes of meeting of Board of Directors of Andrew Yule & Co. Ltd. held on 27-07-2011,
- 6) Copy of letter dt. 03-08-2011 of Andrew Yule & Co. Ltd. in respect of revision of pay scales of Board Level and below Board Level Executives and non-unionised Supervisors and enhancement of retirement age from 58 to 60 years of the employees of company,
- 7) Copy of company's letter dt.30-09-2011, 25-07-2013 to Deptt. of Heavy Industries, where it was clarified that retirement age of unionised employees in the workmen category, placed at the Tea Gardens of the company being governed by the Plantation Labour Act, 1951 and workmen placed at the factories of the company governed by the Industrial Employment (Standing Orders) Act, 1946 was/ is fixed at 58 years and had enclosed a chart depicting the age of Officers and Assistances of the company with their date of retirement year-wise.
- 8) The letter dt. 03-11-2011 of Ministry of Heavy Industries & Public Enterprises, Govt. of India addressed to Chairman & M.D., Andrew Yule & Co. Ltd., whereby the retirement age of the employees of Andrew Yule & Co. Ltd. belonging to Board Level and below Board Level and those employees governed by DPE guidelines was enhanced from 58 to 60 years and such benefit was not extended to those employees of Andrew Yule & Co. Ltd. who are governed by the Industrial Employment (Standing Orders) Act, 1946 and those governed by Plantation Labour Act, 1951.
- 9) Administrative circular dt. 01-03-2012 issued by Andrew Yule & Co. Ltd. increasing the age of retirement from 58 to 60 years only to Board Level and below Board Level and Assistance and not to the other categories of its employees,
- 10) The memorandum of settlement dt. 04-02-2011 executed in between management of Andrew Yule & Co. Ltd. and their unions before Regional Labour Commissioner (C), Kolkata,

- 11) Copy of notices of retirement dt. 13-10-2011 issued to Sri Naresh Kumar Chakraborty, to Sri Mihir Koley who were going to attained the age of superannuation on 31-12-2011, to Sri Joydeb Chatterjee on 22-12-2011 who was going to attain age of superannuation on 31-01-2012, to Sri Samarendra Nath Mukherjee on 26-04-2012 who was going to retire on 30-06-2012 and to Sir Subhash Chandra Naskar on 13-10-2011 and who was going to retire on 31-12-2011.
- 12) Copy of joint petition dt. 06-07-2012 submitted by Sri Naresh Kumar Chakraborty, Sri Subhash Naskar, Sri Mihir Koley, Sri Joydeb Chatterjee and Sri Samarendra Nath Mukherjee to the Director (Personnel), Andrew Yule & Co. Ltd., Kolkata,
- 13) Copy of petition dt.20-07-2012 of Sri Naresh Kr. Chakraborty to Dy. Secretary, Govt. of India, Ministry of Heavy Industries & Public Enterprises,
- 14) Copy of reply dt. 26-09-2012 by Andrew Yule & Co. Ltd. to Sri Naresh Kr. Chakraborty,
- 15) Copy of complaint dt.23-05-2012, 30-11-2012, and 04-04-2013 of Sri Naresh Kr. Chakraborty and Sri Mihir Kr. Koley to R.L.C/ A.L.C, Kolkata,
- 16) Copy of letters of Sri Naresh Kr. Chakraborty, Sri Mihir Kr. Koley, Sri Joydeb Chatterjee, Sri Samarendra Nath Mukherjee and Sir Subhash Chandra Naskar to Director, Andrew Yule & Co. Ltd. dt. 26-11-2012 and 04-02-2013
- 17) Copy of self-prepared list by Sri Naresh Kr.Chakraborty, Sri Mihir Kr. Koley, Sri Joydeb Chatterjee, Sri Samarendra Nath Mukherjee and Sir Subhash Chandra Naskar, projecting names of those workmen of Andrew Yule & Co. Ltd. posted at Head Office and who have been retained beyond the age of 58 years.
- 18) Copy of letter of Andrew Yule & Co. Ltd. dt. 18-02-2013 to ALC(C), Kolkata,
- 19) Copy of proceeding before ALC (C), Kolkata dt. 20-03-2012 and 02-05-2013,
- 20) Copy of Andrew Yule & Co. Ltd.'s letter dt.05-10-2011 addressed to Jt. Secretary, Ministry of Heavy Industries showing details of no. of employees of Andrew Yule & Co. Ltd. in the category of Officer governed by DPE guidelines, non-unionised staff governed by DPE guidelines, unionised staff other than tea garden governed by tripartite settlement and tea garden workers governed by Plantation Labour Act, 1951.

On the other hand following documents have been exhibited from the side of management:-

1. Copy of letter dt.03-08-2011 of Ministry of Heavy Industries and Public Enterprises, Deptt. of Heavy Industry addressed to Chairman-Managing Director, Andrew Yule & Co. Ltd. with regard to enhancement of age of retirement from 58 to 60 years in respect of certain categories of the employees of Andrew Yule & Co. Ltd.
2. Copy of letters of settlement of P.F. account dt.20-12-2011, 12-12-2011, 27-12-2011, 21-06-2012 and 12-12-2011 submitted by Sri Naresh Kr. Chakraborty, Workman No.607, Tea Division, Sri Mihir Koley, Sri Joydeb Chatterjee, Workman no.660, Tea Division, Sri Samarendra Nath Mukherjee, Workman No.376 and Sir Subhash Chandra Naskar , Workman No.630 to the Trustee of Andrew Yule & Co. Ltd. Provident Fund Instn. for the Indian Clerical Staff.
3. Copy of mandate forms along with a receipts showing payment of Rs.1,85,656.49, Rs.5,20,847/-, Rs.3,38,350.86P and Rs.3,00,905.12P towards provident fund to Sri Naresh Kr. Chakraborty , Sri Mihir Koley, Sri Joydeb Chatterjee and Sir Subhash Chandra Naskar on 30-12-2011, 31-01-2012 and on 30-12-2011.
4. Copy of receipts issued by Sri Naresh Kr. Chakraborty, Sri Mihir Koley, Sri Joydeb Chatterjee, Sri Samarendra Nath Mukherjee and Sri Subhash Chandra Naskar acknowledging receipt of Rs.2,70,230.33P towards leave encashment for 358 days, Rs.1,71,616/- towards leave encashment for 320 days, Rs.2,62,323.80P towards leave encashment Rs.1,69,630.93P towards leave encashment for 338 days and Rs.2,05,393.60P towards leave encashment for 330 days. It further shows that Rs.4,18,061.54P, Rs.2,97,027.69P, Rs.2,95,836.92P, Rs.1,91,095.38P and Rs.3,05,040/- towards gratuity to them on 30-12-2011, 31-01-2012, 29-06-2012 and on 31-12-2011.
5. Copy of retirement notices dt. 13-10-2011 addressed to Sri Naresh Kr. Chakraborty, Employee no.607 and Sri Mihir Koley, Employee No.288, informing them, their date of retirement on 31-12-2011, Copy of retirement notice dt. 22-12-2011 addressed to Sri Joydeb Chatterjee, , informing him, his date of retirement on 31-01-2012, to Sri Samarendra Nath Mukherjee dt.26-04-2012 informing him his date of date of retirement was on 30-06-2012 and copy of retirement notice of retirement dt. 13-10-2011 to Sir Subhash Chandra Naskar informing him his date of retirement to be on 31-12-2011.

6. Copy of Andrew Yule's letter dt. 24-04-2013 to ALC (C), Copy of ALC's letter dt. 05-04-2013 to Andrew Yule & Co. Ltd.
7. Copy of complaint petition of Sri Mihir Koley to RLC dt.02-04-2013,
8. Copy of letters dt.05-10-2011, 30-09-2011, 19-08-2013, 25-07-2013, 10-07-2013 addressed to Jt. Secretary, Heavy Industries and Public Enterprises, Deptt. of Heavy Industry by Andrew Yule & Co. Ltd. regarding revision in respect of age of superannuation from 58 to 60 years and pendency of Industrial Disputes on the date of retirement of the concerned workmen
9. Copy of appointment letter of Sri Naresh Kumar Chakraborty dt.13-08-1978,
10. Copy of confirmation letter dt. 14-02-1980 addressed to Naresh Kr. Chakraborty,
11. Copy of Memorandum of settlement dt. 04-02-2011.
12. Copy of failure reports dt. 17-05-2013 of ALC to Ministry of Labour & Employment.
13. Copy of letter dt. 30-12-2011, 31-01-2012, 28-06-2012 and 30-12-2011 addressed to Sri Naresh Kr. Chakraborty, Sri Mihir Koley, Sri Joydeb Chatterjee, Sri Samarendra Nath Mukherjee and Sir Subhash Chandra Naskar by Andrew Yule & Co. Ltd. disclosing the statement of their deposit in provident fund,
14. Copy of joint petition dt. 06-07-2012 submitted by Sri Naresh Kumar Chakraborty, Sri Subhash Naskar, Sri Mihir Koley, Sri Joydeb Chatterjee and Sri Samarendra Nath Mukherjee to the Director (Personnel), Andrew Yule & Co. Ltd., Kolkata,
15. Copy of letters of Sri Naresh Kr. Chakraborty, Sri Joydeb Chatterjee, Sri Samarendra Nath Mukherjee and Sir Subhash Chandra Naskar dt. 26-11-2012 and 04-02-2013 addressed to the Director (Personnel), Andrew Yule & Co. Ltd.
16. Copy of complaint of Sri Naresh Kr. Chakraborty, Sri Joydeb Chatterjee and Sir Subhash Chandra Naskar to R.L.C, Kolkata dt.30-11-2012 and on 02-04-2013,
17. Copy of letter of Andrew Yule & Co. Ltd. dt. 18-02-2013, 24-04-2013 to ALC(C), Kolkata,
18. Copy of letters dt. 10-07-2013, 05-10-2011 of Andrew Yule & Co. Ltd. to Ministry of Heavy Industries & Public Enterprises, Govt. of India,
19. Copy of notice of retirement dt. 13-10-2011 issued by Andrew Yule & Co. Ltd. to Sri Naresh Ch. Chakraborty,
20. Copy of administrative circular dt. 01-03-2012 issued by Andrew Yule & Co. Ltd.
21. Copy of wage policy of Board Level posts and below Board Level posts including non-unionised Supervisors in Public Sector Enterprises w.e.f. 01-01-1997,
22. Copy of letter dt. 26-11-2008 of Ministry of Heavy Industries & Public Enterprises, Deptt. of Public Enterprises with regard to revision of scales of pay w.e.f. 01-01-2007 in respect of Board Level and below Board Level Executives and non-unionised Supervisors,
23. Office memorandum dt.19-07-2007, 20-04-2007 and 26-11-2008 of Ministry of Heavy Industries,
24. Copy of wage policy w.e.f. 01-01-1997,
25. Copy of appointment letter of Sri Joydeb Chatterjee dt. 28-08-1987,
26. Administrative circular dt. 01-03-2012 issued by Andrew Yule & Co. Ltd. increasing the age of retirement from 58 to 60 years only to Board Level and below Board Level and Assistance and not to the other categories of its employees,
27. Copy of letter dt.03-11-2011 of Ministry of Heavy Industries to Chairman, Andrew Yule & Co. Ltd.
28. Copy of petition dt.12-12-2011 of Sir Subhash Chandra Naskar for payment of his P.F. due before 31-12-2011 i.e. prior to his date of superannuation addressed to the Trustee Andrew Yule & Co. Ltd.
29. Copy of ALC's letter dt.05-04-2013 to Sir Subhash Chandra Naskar.

Both sides have also filed their written notes of arguments.

Gone through the oral evidence of all the workmen and that of management witness Mr. Satyendra Kumar Pandey filed in the form of affidavit as well as that have been recorded by the Tribunal along with the documents that have been filed by workmen and management and from where it appears the only issue that need to be decided in the present five reference cases is "whether the age of superannuation of concerned workmen in the category of Typist, Clerk, Driver and Durwan of Andrew Yule Co. Ltd. posted at Head Office, Kolkata was 58 years or 60 years as claimed by them"?

The appointment letters and confirmation letters of those five workmen which have come on record do not disclose what their age of superannuation was at the time of joining the establishment of Andrew Yule & Co. Ltd. However, M.W.1 in his evidence recorded by the Tribunal under oath has admitted that when those five workmen joined the establishment of Andrew Yule & Co. Ltd., their age of superannuation was 60 years. Further, both sides have admitted that when Central Public Sector Enterprises were declare sick, then Cabinet roll back the age of superannuation of the employees of such sick CPSEs from 60 years to 58 years in respect of all categories of employees duly approved by the Board of Directors of such CPSEs in the month of August, 2001. Such decision was reviewed in April, 2005 and decided to enhance the age of retirement from 58 to 60 years only in respect of those employees working in those CPSEs who have started making profit for last three years continuously with positive net worth for last three years as per annual audited report, that CPSEs did not avail any budgetary support during the last three years and who will not avail budgetary support in future and left the decision for the Board of Directors of the CPSE concerned.

Further, the exhibited documents show that Ministry of Heavy Industries by issuing memo no. 10(23)/2011-PE1 dt.03-11-2011 allowed Andrew Yule & Co. Ltd. to enhance the retirement age from 58 to 60 years only in respect of Board Level, below Board Level and those employees who comes within the purview of DPE guidelines, but not to those employees who are governed by Industrial Employment (Standing Orders) Act, 1946 or Plantation Labour Act, 1951. Therefore, here it is necessary to find out who are the employees who fall in the category of Board Level, Below Board Level and those governed by Industrial Employment (Standing Orders) Act, 1946 or Plantation Labour Act, 1951.

It is undisputed fact Andrew Yule & Co. Ltd., a Central Govt. Public Sector Enterprise/Undertaking under the ownership of Heavy Industries, Govt. of India. The majority of products and service offered by it and its subsidiaries are related to heavy industry and engineering and it also owns tea gardens/ tea estates including Hooghly Printing. It comes within the definition of an industry as defined in section 2(j) of The Industrial Disputes Act, 1947 as the establishment where more than 50 employees are engaged. Further, in view of provisions of section 2 (s) any person working in such industry and employed to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward and those Supervisors who draw less than Rs.10,000/- per month and who does not discharge managerial nature of job comes within the definition of workman. The Industrial Employment (Standing Orders) Act, 1946 applies to employees in industrial establishment with 50 or more employees. The Act regulates the condition of employment for these employees.

It is a matter of common sense, a person holding Board Level position in a Public or Private Sector Undertakings indicate such person who holds the position such as Chief Executive Officer, Managing Director, or such person who takes decision on behalf of the Corporation or the person who holds highest level of hierarchy in any organisation or who are part of the Board of Directors of the company.

A Below Board Level employee is an employee in Central Public Sector Enterprises who is not a member of Board of Directors but who holds managerial post and those who do not come within the definition of workman as provided in section 2(s) of Industrial Disputes Act, 1947.

The present five persons being employees of Andrew Yule & Co. Ltd. in the capacity of Clerk, Typist, Driver and Durwan squarely falls within the definition of workman. It is also admitted by all those workmen in their cross examination that they are the members of Andrew Yule & Co. Ltd. (Calcutta Region) Workmen's Union i.e. unionised employees.

It has also come on record that there was a settlement between the different unions of Andrew Yule & Co. Ltd. and the management before the Regional Labour Commissioner (Central), Kolkata on 04-02-2011, under provisions of section 12 (3) of the I.D. Act, 1947. It is noted that two of the workmen namely Sri Naresh Chakraborty and Sri Subhas Chandra Naskar, being the Assistant Secretary and Vice President of Andrew Yule & Co. Ltd. and its Group (Calcutta Region) Workmen's Union, were present and were the signatories of the said settlement. By executing such settlement it was agreed and settled that the superannuation age of unionised workmen of Andrew Yule & Co. Ltd. will be 58 years on and from the closing of business of the last working day of the English Calendar month in which the incumbent attains the age of superannuation in terms of his/her date of birth recorded, admitted and incorporated at the end of the Company at the time of commencement of employment is a Service Condition/ terms for employment for all practical purposes and for all times to come in supersession/ cancellation/ abrogation/ discontinuance of all past practices, systems, procedures, circulars, notices, orders, understanding, settlement/s etc. However, Orders from the Ministry, if any, to be complied with. Provisions in respect of retirement age as contained in the Standard Office Procedure applicable for staff and sub-ordinate staff placed at the Registered Office of the Company stands superseded for all practical purpose.

Permanent employees appointed on any date prior to September 01, 1984, will retire and accordingly the contract of employment by an between the Company and the concerned employee will stand terminated on attaining the age of superannuation i.e. 58 years in terms of the date of birth recorded, admitted and incorporated at the end of the Company at the time of commencement of employment on and from the closing of business of last working day of

the English calendar year the incumbent attains the age of superannuation. However, in case there is a change in the age of superannuation, the concerned employees will retire on and from the closing of business of the last working day of the English calendar month in he or she attains the age of superannuation according to the date of birth recorded, admitted and incorporated at the end of the Company at the time of commencement of employment provided the date of birth is other than 1st day of the English calendar month. In case, the date of birth is 1st day of the English calendar month the incumbent will retire and accordingly the contract of employment by and between the company and the concerned employee will stand terminated on and from the closing of business of the last working day of the previous calendar month. Date of birth in respect of each permanent employee/ workman recorded, admitted and incorporated at the end of the company at the time of commencement of employment shall remain unaltered for all practical purposes for all times to come.

It is true that Ministry of Heavy Industry by issuing memo no. 10(23)/2011-PE1 dt. 03-11-2011 had enhanced the retirement age of the employees of Andrew Yule & Co. Ltd. i.e. after the execution of the above settlement on 04-02-2011, but the above memo of Ministry of Heavy Industries has clearly provided that retirement age of Board Level, Below Board Level employees and those employees who are governed by DPE guidelines would be enhanced from 58 to 60 years but such benefit was not extended to those employees of Andrew Yule & Co. Ltd. governed by Industrial Employment(Standing Order) Act, 1946 and Plantation Labour Act, 1951.

Further, Andrew Yule Co. Ltd. by issuing an administrative circular no. 2012/07 dt. 01-03-2012 in pursuance of memo no. 10(23)/2011-PE1 dt. 03-11-2011 issued by Ministry of Heavy Industries had extended the benefit of enhancement of age of retirement only to the Board Level, Below Board Level Officers and Assistance on the Roll of the company and not to any other categories of employees of the company.

The present set of workmen not being Board Level, Below Board Level or Assistance, but who belong to the category of workman as defined in section 2(s) of I.D. Act, being unionised employees bounded by tripartite settlement dt. 04-02-20211 and employees governed by Industrial Employment (Standing Orders) Act, 1946 are not covered by the benefit of memo no. 10(23)/2011-PE1 dt. 03-11-2011.

Further, nothing has come on record to show that legality of memo no. 10(23)/2011-PE1 dt. 03-11-2011 issued by Ministry of Heavy Industries and the Administrative Circular no. 2012/07 dt. 01-03-2012, issued by Andrew Yule Co. Ltd. were challenged by the present set of workmen or by any employees of Andrew Yule & Co. Ltd. before any Court of Law. Thus, as per unchallenged memo dt. 03-11-2011 of Ministry of Heavy Industries and the administrative circular no. 2012/07 dt. 01-03-2012 issued by Andrew Yule Co. Ltd., the present set of workmen have no locustandi to claim benefit of memo dt.03-11-2011 of Ministry of Heavy Industries and Administrative Circular dt.01-03-2012, which exclude them from benefit of enhanced age of retirement being workman category of employees.

Further, the workmen have failed to produce any subsequent settlement executed between the management of Andrew Yule & Co. Ltd. and unions, extending the benefits of memo no. 10(23)/2011-PE1 dt. 03-11-2011 and the administrative circular no. 2012/07 dt. 01-03-2012 issued by Andrew Yule Co. Ltd., superseding the settlement dt. 04-02-2011, where the retirement age of the workman category employees of Andrew Yule & Co. Ltd. was fixed at 58 years and by which they are bounded.

That apart, from the above mentioned exhibited documents, it is seen that all the five workmen were served with notice of their retirement 2/3 months prior to their actual retirement on their attaining age of 58 years by the company. It has come on record that none of those workmen who retired after December, 2011 have raised any objection against notices of retirement served upon them alleging that their retirement age was already enhanced to 60 years by virtue of memo no. 10(23)/2011-PE1 dt. 03-11-2011 issued by Ministry of Heavy Industries. It is very interesting to note that all workmen have accepted their retirement on attaining the age of 58 years without any qualms and by withdrawing their Provident Fund, accepting leave encashment and gratuity from the management of Andrew Yule & Co. Ltd. on the day they retired from the service. Then, a question may arise, how a workman who has received provident fund, leave encashment and gratuity from the employer can raise a dispute alleging that they have been illegally retrenched /terminated from the service by the employer on their attaining the age of 58 years as contended by them in their claim statements or their retirement was premature as contained in order of reference.

Further, those five workmen have failed to produce any official record and other independent witnesses to prove and corroborate that employees of Andrew Yule & Co. Ltd. in the category of unionised workman posted at Head Office were extended the benefit of memo no. 10(23)/2011-PE1 dt. 03-11-2011 issued by Ministry of Heavy Industries, post their retirement and as shown by them in their self-prepared list and which have been exhibited by them.

In view of the above discussion, this Tribunal is of view all the five workmen being unionised workmen, governed and bounded by the tripartite settlement executed in between the management and unions on 04-02-2011. They being employee in the category of a workman as defined in section 2(s) of Industrial Disputes Act, and governed by Industrial Employment (Standing Orders) Act, 1946 are not entitled to get the benefit of memo no. 10(23)/2011-PE1 dt. 03-11-2011 issued by Ministry of Heavy Industries and which has been given effect only to

Board Level, Below Board Level and Assistance by Andrew Yule & Co. Ltd. by issuing administrative circular no. 2012/07 dt. 01-03-2012. Further, all workmen who have honourably acknowledged their age of superannuation on completion of age of 58 years and who have withdrawn all their deposit in provident fund and accepted leave encashment and gratuity from the employer, the day they superannuated from the service are barred by the principle of estoppel and acquiescence in raising the dispute alleging that they have been prematurely terminated from their services. In fact, this Tribunal holds the dispute raised by all the five employees claiming termination by way of premature retirement without extending the benefit of memo no. 10(23)/2011-PE1 dt. 03-11-2011 issued by Ministry of Heavy Industries to be speculative.

Hence, this Tribunal holds the claims of all five workmen are not maintainable. Accordingly Reference No. 36 of 2013, Reference No. 37 of 2013, Reference No.38 of 2013, Reference No. 39 of 2013 and Reference No. 43 of 2013 in respect of ex-workmen namely Sri Naresh Kumar Chakraborty, Sri Mihir Koley, Sri Joydeb Chatterjee, Sri Samarendra Nath Mukherjee, and Sri Subhas Chandra Naskar of Andrew Yule & Co. Ltd. are dismissed and an award to that effect is passed.

Justice K. D. BHUTIA, Presiding Officer

नई दिल्ली, 11 फरवरी, 2025

का.आ. 189.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बी.एस.एन.एल., पश्चिम बंगाल टेलीकॉम सर्किल, के प्रबंधन के संबद्ध नियोजकों और बी.एस.एन.एल., कैजुअल मजदूर यूनियन, के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण-सह-श्रम न्यायालय, कोलकाता, पंचाट (संदर्भ संख्या **REF. NO.09 OF 2017**) को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 11.02.2025 को प्राप्त हुआ था।

[सं. एल – 40011/02/2017-आईआर (डीयू)]

दिलीप कुमार, अवर सचिव

New Delhi, the 11th February, 2025

S.O. 189.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. **No. 09 OF 2017**) of the **Central Government Industrial Tribunal cum Labour Court, Kolkata**, as shown in the Annexure, in the Industrial dispute between the employers in relation to **B.S.N.L, West Bengal Telecom Circle, and B.S.N.L, Casual Mazdoor Union**, which was received along with soft copy of the award by the Central Government on 11.02.2025.

[No. L-40011/02/2017-IR (DU)]

DILIP KUMAR, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT KOLKATA

Present : Justice K. D. Bhutia, Presiding Officer.

REF. NO. 09 OF 2018

Parties : Employers in relation to the management of

B.S. N.L, West Bengal Telecom Circle

VS

B.S.N.L. Casual Mazdoor Union, West Bengal

Appearance:

On behalf B.S.N.L. Casual Mazdoor Union: Mr. Rajib Mukherjee, Ld. Advocate.

On behalf of the Union : Mrs. Madhumita Dutta, Ld. Advocate.

Dated: 27th January, 2025

AWARD

By order No. L-40011/02/2017 –IR(DU) dated 02-06-2017, the Central Government, Ministry of Labour in exercise of power conferred sub-section 1(d) and sub-section 2(A) of section 10 of Industrial Dispute Act, 1947 has referred the following disputes to this Tribunal for adjudication:-

“Whether the action of the management of B.S.N.L. headed by Chief General Manager, West Bengal Telecom Circle, 1, Council House Street, Kolkata – 700001 by not paying minimum relevant pay scale of central govt. i.e. Rs.6500/- (PB-1 Rs.5200/- + grade pay Rs.1,300/-) or Rs.7,000/- (PB-1 Rs.5200/- + GP Rs.1800/-) with effect from 01-01-2006 to the casual labourers of BSNL is legal and/or justified? If not, what relief the workmen are entitled to?”

The facts relevant for determination of the present case is that the casual employees of BSNL, West Bengal Circle, through their union have raised the present dispute demanding payment of minimum scale of pay of Rs.6,500/- or Rs.7,000/- w.e.f. 01-01-2006 as per recommendation of 6th Central Pay Commission.

It is their case that they have been engaged directly by Dept. of Telecommunication and presently BSNL at various offices and Exchanges of Calcutta, Howrah, Hooghly, North 24 Parganas and South 24 Parganas. They have been engaged to do various jobs which are normally discharged by ordinary Group-C and Group-D staff of the BSNL. That they have been rendering their continuous service to Telecommunication Department without any break for more than two decades by doing the job which is normally done by regular employees of BSNL.

Earlier all casual labourers were working in Dept. of Telecommunication (DOT) and they were paid wages as per the recommendation of 4th and 5th Central Pay Commission. Accordingly, DOT issued order to that effect on 05-09-1998 vide which wages of the casual labourers were fixed at the rate of 1/30th of pay the minimum of the relevant pay scale plus dearness allowance for work of 8 hours w.e.f. 01-01-1996.

The Dept. of Telecommunication was converted into BSNL w.e.f. 01-01-2000 under. At the time of formation of BSNL in the year 2000, the wages of casual labourers was fixed on the basis of DOT order dt.15-09-1998 and no separate order was issued by BSNL authorities with regard to the wages of casual labourers. Therefore, all along BSNL followed the order dt. 15-09-1998 issued by DOT.

Recommendation of 6th Central Pay Commission was implemented w.e.f. 01-01-2006 but the authority of BSNL by issuing order No.269-11/2009/Pers-IV/LE dated 01-01-2010, for revised the wages of casual labourers as 1/30th of the minimum pay plus dearness allowance on the basis of revised CDA pay scale for Group-“D” cadre notified by the Govt. of India dated 29-08-2008, but failed to fix minimum pay of casual labourers of BSNL at Rs.7,000/- (PB-1 Rs.5,200/- + GP Rs.1800/-) , rather BSNL fixed basic pay of casual labourers at Rs.6,050/-w.e.f. 01-01-2006, thereby depriving casual labourers of Rs.950/- per month in their basic pay.

Further, BSNL, West Bengal, revised the wages of its casual workers by reducing from Rs.6,050/- to Rs.5,740/- without any reason or basis.

Thus, union has alleged that as per Pay Commission recommendation the casual labourers engaged on casual basis are to be paid wages worked out on the basis of minimum pay in the pay scale of regular employees in the corresponding cadre but without any increment. That casual employees/labourers are entitled to DA on the minimum of the pay scale.

Thus, they have alleged that the order of BSNL dated 01-01-2010 is in violation of recommendation of payment of wages to casual labourers by 6th Central Pay Commission w.e.f.01-01-2006.

Thus, they have prayed for minimum basic pay of casual labourers may be fixed as per the recommendation of the 6th Central Pay Commission and pass necessary order.

Such case of the union has been contested by BSNL by filing written statement and where it is categorically alleged that the claim made by the union is not maintainable. That casual labourers are not entitled to get benefits of 6th Central Pay Commission, rather they are entitled to get the wages as per the terms and conditions of the engagement. The wages of all casuials are decided by the management of BSNL after due negotiation with the concerned set of employees/unions. In view of revision of minimum wages by Govt. of India vide letter dt. 19-01-2017, BSNL by issuing a letter no. 11-3/2016-LE dt.22-8-2017 issued following guidelines :-

- A. The wages of Casual Labour continue to be engaged in BSNL should continue to be calculated on the basis of basic pay plus applicable DA on the minimum of lowest CDA pay scale of Government of India (6th Central Pay Commission CDA pay scales) i.e. in terms of this office letter no.269-11/2009-Pers-IV/LE dated 01-01-2010.
- B. Wherever the wages so calculated are less than the wages prescribed under Minimum Wages Act as notified, including the State amendments, the higher of the two should be paid.

Accordingly, BSNL Corporate Office formed a committee to examine the issue of wage revision of casual labourers in BSNL and recommended payment of minimum wages to the casual labourers and revision of wages of the casual labourers will be taken up as and when financial health of BSNL would improve and becomes sustainable.

Therefore, the pay of casual labourers fixed at Rs.5,740/- vide Gazette notification no.GSR-622(E) dt.29-08-2008 and which was implemented by BSNL, Telecom Circle, Kolkata by issuing a circular dated 24-03-2010 and as per BSNL Corporate Office instruction no.269-11-Pers-IV/LE dt. 01-01-2010. However, due to mistake basic pay of

casual workers remained at Rs.6,050/- and which was later corrected and fixed at Rs.5,740/- after receiving instruction from Dy. General Manager, (HR & Admn.), West Bengal Telecom Circle, Kolkata on 24-03-2010 and issued in line of BSNL Corporate Office instruction no.269 mentioned above. Accordingly, at present the pay of BSNL casual workers is fixed at Rs.5,740/-. Therefore, it has alleged claim of the union being baseless is not maintainable.

The union has filed rejoinder where it has invariably reiterated what it has alleged in its claim application.

The union to substantiate its case and claim has examined Sri Tarak Kundu, Asst. Secretary as W.W.1 and Sri Goutam Das, District Secretary, BSNL Casual Mazdoor Union as W.W.2. BSNL has examined Smt. Sunanda Bose, JTO as M.W.1.

The union have filed the following documents:-

1. Copy of letter of authority, Exb. W-1.
2. Copy of letter dt.18-01-2014 of the union to the management of BSNL, Exb.W-2.
3. Copy of letter dt. 10-07-2015 of union to DLC (C), Exb.W-3.
4. Copy of letter dt. 22-01-2015 to the Ministry of Telecom, Exb.W-4.
5. Copy of notice of ALC (C) dt. 16-07-2015 to the management of BSNL. Exb.W-5.
6. Copy of union's letter dt. 10-06-2016 to ALC (C), Exb.W-6/
7. Copy of BSNL's letter dt. 21-11-2007 along with minutes of the meeting dt.05-11-2007 are collectively marked as Exb.W-7.
8. Copy of minutes of meeting dt. 08-11-2007 , Exb.W-8.
9. Copy of letter dt. 15-09-1998 and 19-04-1999 of Deptt. of telecommunication as Exb.W-9 & Exb.W-10.
10. Copy of notification of Ministry of Finance, dt. 29-08-2008, Exb.W-11.
11. Copy of memorandum of explanatory to the Central Civil Services (Revised Pay) Rules, 2008, Exb.W-12.
12. Copy of resolution dt.29-08-2008 of Ministry of Finance, Exb.W-13.
13. Copy of O.M. No.49014/5/2004/Est. (C) dt.31-05-2004, Exb.W-14.
14. Copy of circular dt.01-01-2010 along with methodology of fixation of pay, Exb.W-15.
15. Copy of office memorandum dt.10-04-2023, 06-11-2023, 20-04-2023, dt.19-02-2018, 13-09-2019, 14-09-2019, dt.12-09-2008, 30-08-2008 and 23-01-2012, Exb.W-16 to Exb.16/H.
16. Copy of Deptt.'s letters dt. 23-04-2018 and 11-12-2023, Exb.W-17 & 17/A.
17. Copy of union's two letters both dt. 05-11-2022, Exb.W-18 & 18/A.
18. Copy of circular no.71 dt.05-03-2018 of Ministry of Communication and I. T., Exb.W-19.
19. Copy of office eleven wage slips, Exb.W-20 series.
20. Copy of fitment table issued as per 6th Pay Commission, Exb. W-21 and 21/A.
21. Copy of DOT's letter dt.15-09-1998, Exb.W-22.
22. Copy of BSNL's letter dt.14-11-2018, Exb.W-23 and
23. Copy of office order dt.23-09-2008 issued by Deptt. of Personal Training, Exb.W-24.

On the other hand, Management has filed the following documents :-

1. Letter of authority of M.W.1, Exb.M-1.
2. Copy of AGM's letter dt.22-08-2017, Exb.M-2.
3. Copy of Ministry of Finance Notification dt. 29-08-2008, Exb.M-3.
4. Copy of AGM's letter dt. 27-01-2023, Exb.M-4.
5. Copy of DGM's letter dt. 24-03-2010, Exb.M-5 and
6. Copy of letter dt.01-01-2010 of AGM, Exb.M-6.

The parties are filed their written notes of argument.

Having regards to the pleadings of the parties both oral and documentary and the submission made by the Ld. Counsels for both sides the only issue that needs determination in the present reference is whether the casual labourers of BSNL are entitled to get benefits of the recommendation of 6th Central Pay Commission.

It is a matter of common knowledge that Bharat Sanchar Nigam Limited, is a central public sector undertaking, under the ownership of Department of Telecommunication, which is part of the Ministry of Communications, Government of India having its headquarter, Registered and Corporate Office in New Delhi, India. Therefore, BSNL cannot be termed as a Central Government office or Govt. Department, the salary of whose employees is guided by Central Pay Commission and persons working in BSNL cannot be termed as Central Govt. employees. Further, it is the matter of common knowledge, any Central Pay Commission recommendation is primarily applied to Central Govt. employees.

M.W.1 Smt. Sunanda Bose, JTO of BSNL in her cross examination has stated that as per the order of the Corporate Office the pay scale of casual workmen is calculated and fixed. That she has produced letters dt. 22-08-2017 and dt. 27-01-2023 issued by Corporate Office of BSNL and which have been marked as Exb.M-2 and M-4. Both such letters deal with the revision of wages of casual labourers in BSNL in view of revision of minimum wages notified by Govt. of India on 19-01-2017 and for reduction of basic pay of casual labourers from Rs.6,050/- to Rs.5,740/- during the pendency of the present reference case. Both such letters prima facie shows the wages of casual labourers continue to be engaged in BSNL should continue to be calculated on the basis of pay plus applicable DA on the minimum of lowest CDA pay scale of Govt. of India (6th Central Pay Commission CDA Pay Scale) i.e. in terms of office letter no.269/11/2009-Pers-IV/LE dt. 01-01-2010. In case the wages so calculated are less than the wages prescribed under Minimum Wages Act as notified, includes the State amendments, the higher of the two should be paid. The same proposal has been accepted by BSNL with regard to revision of basic pay of casual labourers by issuing letter dt.27-01-2023. Thus, from those two exhibited letters of BSNL it appears that basic pay of casual labourers engaged by BSNL is calculated on the basis of the basic pay plus DA on the minimum of lowest CDA pay scale of Govt. of India (6th Central Pay Commission CDA Pay Scales) and in case such fixation is less than prescribed minimum wages then higher of the two should be paid.

That apart, Exb.M-6, a letter dt.01-01-2010 issued by Corporate Office, New Delhi shows that wages of temporary status mazdoors and casual labourers engaged for work of regular nature were revised and guided by DOT's letter no.269-10/1989-STN dt. 07-11-1989 issued under "Casual Labourers (Grant of Temporary Status and Regularisation) Scheme, 1989. That as per the said scheme conferment of temporary status would inter alia entitled the casual labourers to wages at daily rate with reference to the minimum of pay scale of regular Group-D cadre (IS Pay Band) notified by Govt. of India vide GSR no. 622(E) dt.29-08-2008 (Central Civil Service [Revised Pay] Rules, 2008) and enclosed methodology of fixation of pay of the casual labourers with temporary status. That wages of casual labourers engaged for regular nature was revised to 1/30th of the minimum of pay plus dearness allowance on the basis of revised CDA Pay Scale of Group-D cadre (IS Pay Band) notified by Govt. of India vide GSR no. 622(E) dt.29-08-2008 (Central Civil Service [Revised Pay] Rules, 2008) and wages of casual labourers engaged for work of intermittent/ seasonal nature may be paid at rate of Minimum Wages notified from time to time by the Ministry of Labour and Employment, Government of India.

Exb.W-4, office memorandum dt.22-01-2015 issued by Govt. of India, Ministry of Communication & IT Department of Posts shows that the remuneration of full time casual labourer (other than temporary status), part time labourers / workers engaged on contingencies basis was revised in concurrence with Integrated Finance Wing dairy no. 343/FA /2015 CS dt.22-01-2015 w.e.f. 01-01-2006 as follows:-

- (i) The wages of Full Time Casual Labourers (other than Temporary Status) would be calculated at the minimum of Pay Band-1 (Rs.5200-20200) i.e. Rs.5200 plus a Grade Pay of Rs.1300/- and Dearness Allowances as admissible from time to time. In addition, the benefit of merger of 50% of dearness allowance will also be admissible in terms of DOPT OM No. 49014/5/2004-Estt. (C) dt. 31-05-2004.
- (ii) So far as part time casual labourers are concerned, their wages would be calculated on pro-rata basis in terms of hours of duty put in with respect to the minimum Pay Band-1 (Rs.5200/- - 20200/-) i.e. Rs.5200/- plus a Grade Pay of Rs.1,300/- and Dearness Allowances as admissible from time to time. In addition, the benefit of merger of 50% of dearness allowance will also be admissible in terms of DOPT OM No. 49014/5/2004-Estt. (C) dt. 31-05-2004.

Further, for the Full Time Casual Labourers covered by Para I (V) of DoPT OM no. 49014/2/86 Estt. (C) dt. 07-06-1988 i.e. Full Time Casual Labourers who are engaged to perform work different from the work performed by regular employee will continue to be remunerated based on the Minimum Wages prescribed by Central or State Govt., whichever is higher.

That Exb.W-9, letter dt.15-09-1998 issued by the Govt. of India, Dept. of Telecommunication, New Delhi, to the Chief General Managers of all Telecom Circles, prima facie shows that in view of guidelines laid down by the Personnel and Training vide letter No.49014/2/86 Estt. (C) dated 07-06-1988 issued in compliance of the Apex Court

Judgment regarding wages of casual labourers it has now been decided that all the casual labourers working in the Department may be paid wages at the rate of 1/30th of pay at the minimum of the relevant pay scale plus Dearness Allowance for work of 8 hours w.e.f. 01-09-1996. That other instructions regarding calculation of wages etc. issued by the department from time to time may however, be kept into consideration while making payments to different categories of casual labourers/part time Casual Labourers. Such letter was issued in concurrence of Telecom. Finance vide letter no. 2347/FA-1/98 dated 10-09-1998. Such exhibit further shows it is applicable to the casual labourers without temporary status working in the Dept. of Telecommunication. Such recommendation of 5th Pay Commission was circulated by Department of Telecommunication, West Bengal Circle by issuing Exb.W-10 a circular dt. 19-04-1999 only in respect of casual labourers (without temporary status) working in the Dept. of Telecommunication.

Exb.W-15, letter dt. 01-01-2010 issued by BSNL, Govt. of India Enterprises Corporate Office, New Delhi shows that wages of the casual labourers including TSMs was revised from 01-01-2010 in the following manner:-

1. Wages of Casual Labourers with Temporary Status shall be revised as per the provisions of the letter quoted at 1.0(a) above and worked out on the basis of the revised CDA Pay Scales for Group D Cadre (-IS Pay Band) notified by Government of India vide G.S.R. No.622(E) dated 29-08-2008 (Central Civil Service (Revised Pay) Rules, 2008). The methodology for fixation of pay of the casual labourers with Temporary Status is enclosed as Annexure-I.

2. Wages of casual labourers engaged for work of regular nature shall be revised to 1/30th of the minimum pay scale plus Dearness Allowance on the basis of the revised CDA Pay Scales for Group D Cadre (-IS Pay Band) notified by the Government of India vide G.S.R. 622(E) dated 29-08-2008 (Central Civil Service (Revised Pay) Rules, 2008).

3. Wages of casual labourers engaged for work of intermittent/seasonal nature may be paid at rates of Minimum Wages notified from time to time by the Ministry of Labour and Employment, Government of India.

It has further been observed that despite of a complete ban on engagement of casual labourers for work of regular nature from the year 1988 which has been stressed upon by BSNL CO from time to time, instances of engagement of casual labourers for work of regular nature by various Circles/ Units have been reported. Flouting of the above said ban orders is a serious offence. It is therefore reiterated that casual labourers should not be engaged and strict action be taken against erring officers/ officials who have engaged casual labourers for works of regular nature.

That apart, Exb.W-16/F dt. 12-09-2008 issued by Govt. of India, Ministry of Personnel, PG and Pensions, Dept. of Personnel & Training shows that recommendation of 6th Central Pay Commission as per Govt. of India notification dt.2229-08-2008 was extended to casual labourers with temporary status and their basic pay was fixed at the pay scale of Group-D employees as per 15th Pay Band and corresponding Grade Pay.

Exb.W-16/H office memorandum dt.23-01-2012 issued by Govt. of India, Ministry of Personnel, PG and Pensions, Dept. of Personnel & Training shows that the wages of casual labourers, who were granted the temporary status in terms of the provision of the Casual Labourers (Grant of Temporary Status and Regularisation) Scheme, 1993 were paid wages based on the pre-revised scale-1 as on 01-01-2006 was worked out and paid on the basis of the Pay Band-1 with Grade Pay of Rs.1800/- w.e.f. 01-01-2006 to the matriculate labourers and was extended such benefit to non-matriculate labourers on certain conditions.

Exb.W-16/C another office memorandum dt.19-02-2018 issued by Govt. of India, Ministry of Personnel, PG and Pensions, Dept. of Personnel & Training regarding applicability of recommendation of 7th Central Pay Commission to casual labourers with temporary status and which also shows extension of pay matrix recommended by 7th Central Pay Commission to casual labourers with temporary status having Matriculate education and extension to non-matriculated casual employees on certain conditions.

Further, Exb.W-16/D a letter dt. 13th September, 2019 issued by Govt. of India, Ministry of Heavy Industries & Public Enterprises, after taking into consideration various instructions issued by the Hon'ble Supreme Court and also by DOPT's OM no. 49014/1/2017-Estt.(C) dt. 04-09-2019 (Exb-W-16/E) on the subject of equal pay for equal work for casual workers has provided guidelines for fixation of wages to casual worker/daily worker employed by Central Public Sector Enterprises as follows :

- A. Where the nature of work entrusted to the casual workers and regular employees is the same, the casual workers may be paid at the rate of 1/30th of the pay at the minimum of the relevant pay scale plus dearness allowance for work of 8 hours a day.
- B. In cases where the work done by a casual worker is different from the work done by a regular employee, the casual worker may be paid only the minimum wages notified by the Ministry of Labour & Employment or the state Government/ Union Territory Administration, whichever is higher as per the Minimum Wage Act, 1948.

C. Persons on daily wages (casual workers) should not be recruited for work of regular nature.

Thus directed all CEOs of CPSEs and administrative Ministries/Departments to ensure strict compliance of the above provisions.

Exb.W-19, Circular No.17 issued under F. No. 1-5(01) /2018 –PAT dt.05-03-2018 by Govt. of India, Ministry of Communication and IT, Deptt. of Telecommunication, which controls BSNL prima facie shows that Dept. of Telecommunication follows guidelines issued by Govt. of India, Ministry of Personnel, PG and Pensions, Dept. of Personnel & Training with regard to the fixation of pay scale of casual labourers with temporary status. Such facts stands corroborated by Exb.W-22 a circular issued by Govt. of India, Dept. of Telecommunication directing its all Chief General Managers, directing them to pay wages to all casual labourers working in the Telecom Dept. at the rate of 1/30th of pay at the minimum of the relevant pay scale plus dearness allowance for work of 8 hours w.e.f. 01-01-1996.

Therefore, in view of the above exhibited documents, it is seen that all along the basic pay scale of casual workers with temporary status or casual workers without temporary status working in BSNL, earlier in DOT, was fixed on the minimum basic scale of Group-D cadre of Central Govt. and as recommended by Central Pay Commission. Further, guidelines issued by the Govt. of India, Ministry of Personnel, PG and Pensions, Dept. of Personnel & Training also shows fixation of basic pay scale of temporary casual workmen at per with pay scales for Group-D employees as per IS Pay Band and corresponding Grade Pay recommended by 6th Central Pay Commission and approved by the Govt. and Ministry of Finance (Deptt. of Expenditure).

That apart, M.W.1 in her cross examination has stated that casual workers of BSNL used to draw basic pay as per recommendation of 5th Central Pay Commission and they are also entitled to get recommendation of 6th Pay Commission. She has further stated that she has no knowledge how the basic pay of casual workmen has been fixed to Rs.5,740/- by Corporate Office.

In the present case no material whatsoever have come with regard to prove the actual status of those casual employees whom the union represent, whether they were/are Full Time Casual Workmen other than temporary status casual workmen or part time casual workmen or they are governed by the Casual Labourers (Grant of Temporary Status and Regularisation) Scheme, 1993.

However, from the admission made by M.W during cross examination and from letters issued by Govt. of India, Ministry of Communication and IT, Deptt. of Telecommunication in connection of fixation and revision of pay of casual employees of BSNL and discussed above, it appears that BSNL or earlier DOT had extended 4th & 5th Central Pay Commission recommendation for fixation of minimum pay scale of its casual workmen and their wages were fixed or worked out on the basis of minimum pay scale of regularly employed workers in the corresponding cadre but without increment. Further, it is seen BSNL follows the guidelines issued by the Govt. of India, Ministry of Personnel, PG and Pensions, Dept. of Personnel & Training. Ext w-16/F dt. 12-09-2008 clearly provides applicability of revised Group “D” Pay Scale to casual Labourers with Temporary Status and revision of basic pay of casual labourers with temporary status at per with pay scales for Group-D employees as per IS Pay Band and corresponding Grade Pay recommended by 6th Central Pay Commission and approved by the Govt. and Ministry of Finance (Deptt. of Expenditure). Therefore, this Tribunal is of view BSNL cannot deny or deprive its casual employees in fixation of their pay scale at the minimum Pay Scale of Group- D cadre employees as provided in of 6th & 7th Pay Commission but without increment.

In view of the above, the casual employees engaged by BSNL, West Bengal Circle are entitled to get the benefit of revision of their pay scale and fixation of their pay on the basis of minimum pay scale of Group D cadre employees of Central Government, without any increment based on recommendation of 6th and 7th pay commission. Accordingly, Reference Case no. 09 of 2018 is disposed of and an award to that effect is passed.

Justice K. D. BHUTIA, Presiding Officer

नई दिल्ली, 11 फरवरी, 2025

का.आ. 190.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एंड्रयू यूल एंड कंपनी लिमिटेड, के प्रबंधन के संबद्ध नियोजकों और श्री जॉयडेड चटर्जी, कामगार, के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण-सह-श्रम न्यायालय, कोलकाता, पंचाट (संदर्भ संख्या REF. NO. 38 OF 2013) को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 11.02.2025 को प्राप्त हुआ था।

[सं. एल – 42011/101/2013-आईआर (डीयू)]

दिलीप कुमार, अवर सचिव

New Delhi, the 11th February, 2025

S.O. 190.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. **NO. 38 OF 2013**) of the **Central Government Industrial Tribunal cum Labour Court, Kolkata**, as shown in the Annexure, in the Industrial dispute between the employers in relation to **Andrew Yule & Company Limited, and Shri Joydeb Chatterjee, Worker**, which was received along with soft copy of the award by the Central Government on 11.02.2025.

[No. L-42011/101/2013-IR (DU)]

DILIP KUMAR, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT KOLKATA

Present : Justice K. D. Bhutia, Presiding Officer.

REF. NO. 36 OF 2013

REF. NO. 37 OF 2013

REF. NO. 38 OF 2013

REF. NO. 39 OF 2013 AND

REF. NO. 43 OF 2013

Parties : Employers in relation to the management of

Andrew Yule & Company Limited

VS

- 1. Sri Naresh Kumar Chakraborty,**
- 2. Sri Mihir Koley,**
- 3. Sri Joydeb Chatterjee,**
- 4. Sri Samarendra Nath Mukherjee, and**
- 5. Sri Subhas Chandra Naskar**

Appearance:

On behalf Andrew Yule & Company Limited: Mr. Sushil Kumar Karmakar, Ld. Advocate.

On behalf of Five workmen: Mr. Saibal Mukherjee, Ld. Advocate.

Dated: 21st January, 2025

AWARD

This common award disposes all the above mentioned five reference cases as issues involved in all those cases are exactly same and parties are five workmen who have alleged to have been illegally terminated from their permanent regular service by their employer Andrew Yule & Co. Ltd., on their attaining the age of 58 years.

The Central Government, Ministry of Labour vide Order Nos. L-42011/103/2013 –IR(DU) dated 25-07-2013: No. L-42011/102/2013-IR(DU) dt.25-07-2013; No. L-42011/101/2013-IR (DU) dt. 25-07-2013; No. L-42011/100/2013-IR (DU) dt.29-07-2013 and No L-42012/59/2013-IR (DU) dt. 12-09-201, in exercise of power conferred sub-section 1(d) and sub-section 2(A) of section 10 of Industrial Dispute Act, 1947 has referred the following disputes to this Tribunal for adjudication:-

1. (Ref. 36/2013)

“Whether the action of the management of Andrew Yule & Company Limited in terminating the service of **Sri Naresh Kumar Chakraborty** w.e.f. 01-01-2012 by way of premature retirement without extending the benefit of enhanced age of superannuation from 58 to 60 years and implementing the orders of the Ministry of Heavy Industries & Public Enterprises, Dept. of Heavy Industries, Govt. of India vide memo no.10 (23)/2011-PEI dated 03-11-2011, with immediate effect is legal and justified? To what relief the workman is entitled to?”

2. (Ref. 37/2013)

“Whether the action of the management of Andrew Yule & Company Limited in terminating the service of **Sri Mihir Koley** w.e.f. 01-01-2012 by way of premature retirement without extending the benefit of enhanced age of superannuation, from 58 to 60 years and implementing the orders of the Ministry of Heavy Industries & Public

Enterprises, Dept. of Heavy Industries, Govt. of India vide memo no. 10(23)/2011-PEI dated 03-11-2011, with immediate effect is legal and justified? To what relief the workman is entitled to?"

3. (Ref. 38/2013)

"Whether the action of the management of Andrew Yule & Company Limited in terminating the service of **Sri Joydeb Chatterjee** w.e.f. 01-02-2012 by way of premature retirement without extending the benefit of enhanced age of superannuation, from 58 to 60 years and implementing the orders of the Ministry of Heavy Industries & Public Enterprises, Dept. of Heavy Industries, Govt. of India vide memo no. 10(23)/2011-PEI dated 03-11-2011, with immediate effect is legal and justified? To what relief the workman is entitled to?"

4. (Ref. 39/2013)

"Whether the action of the management of Andrew Yule & Company Limited in terminating the service of **Sri Samarendra Nath Mukherjee** w.e.f. 01-07-2012 by way of premature retirement without extending the benefit of enhanced age of superannuation, from 58 to 60 years and implementing the orders of the Ministry of Heavy Industries & Public Enterprises, Dept. of Heavy Industries, Govt. of India vide memo no. 10(23)/2011-PEI dated 03-11-2011, with immediate effect is legal and justified? To what relief the workman is entitled to?"

5. (Ref. 43/2013)

"Whether the action of the management of Andrew Yule & Company Limited in terminating the service of **Sri Subhas Chandra Naskar** w.e.f. 01-01-2012 by way of premature retirement without extending the benefit of enhanced age of superannuation, from 58 to 60 years and implementing the orders of the Ministry of Heavy Industries & Public Enterprises, Dept. of Heavy Industries, Govt. of India vide memo no. 10(23)/2011-PEI dated 03-11-2011, with immediate effect is legal and justified? To what relief the workman is entitled to?"

That contents of their separate claim statements appear to be exactly same save and except their date of joining, category of service to which they joined the establishment of Andrew Yule & Co. Ltd., their date of birth and their date of superannuation.

Sri Naresh Kumar Chakraborty, in his written statement has alleged that he joined the establishment of Andrew Yule & Co. Ltd. as a clerical staff (Typist) on 16-08-1979 on probation and later his service was confirmed on 16-02-1980 and all along he was posted at Head Office at Kolkata.

Sri Mihir Koley, in his written statement has alleged that he joined the establishment of Andrew Yule & Co. Ltd. as a Subordinate Staff (Driver) on 20-03-1980 on probation and later his service was confirmed on 20-09-1980 and all along he was posted at Head Office at Kolkata.

Sri Joydeb Chatterjee, in his written statement has alleged that he joined the establishment of Andrew Yule & Co. Ltd. as a Typist on 01-09-1987 and all along he was posted at Head Office at Kolkata.

Sri Samarendra Nath Mukherjee, in his written statement has alleged that he joined the establishment of Andrew Yule & Co. Ltd. as a Durwan on 05-07-1990 and all along he was posted at Head Office at Kolkata, and

Sri Subhas Chandra Naskar, in his written statement has alleged that he joined the establishment of Andrew Yule & Co. Ltd. as a Clerk on 01-10-1985 and all along he was posted at Head Office at Kolkata.

However, they all have alleged that when they joined the establishment of Andrew Yule & Co. Ltd., their age of superannuation was fixed at 60 years. That company was declared as a sick industry in the year 2001 and as such their age of superannuation was rolled to 58 years with the approval of the Cabinet.

But later, Central Govt. had taken a decision to increase the age of superannuation of Board Level and Below Board Level employees of Central Public Sector Enterprise from 58 years to 60 years vide D.P.E. O.M. No. 18 (6)/98 –GM-GL-002 dated 19-05-1998.

Further, when the sick CPSEs started making profit after 2004, then those CPSEs requested the concerned Ministry/Department to enhance the age of superannuation of its employees from 58 years to 60 years. That D.P.E. approved the proposal to enhance the age of superannuation from 58 to 60 years on fulfilment of certain conditions by issuing memorandum No. 18(1) / 2007- GM-GL-80 dated 20-04-2007.

On receiving such memorandum Board of Directors of Andrew Yule & Co. Ltd. called a meeting on 27-07-2011 and decided to enhance the age of superannuation of its all employees from 58 to 60 years and sent a proposal to that effect before Dept. of Heavy Industries, Govt. of India for approval of proposal w.e.f. 01-04-2011. Further, the management sent a proposal letter no. AY/CMD /31 dated 03-08-2011 to the Dept. of Heavy Industries, Ministry of Heavy Industries and Public Enterprises, for enhancement of retirement age of its all employees from 58 to 60 years. That management further vide letters dt. 30-09-2011 and 05-10-2011 to the Ministry of Heavy Industries, appraised that enhancement of age of retirement from 58 to 60 years will not be applicable to the unionised employees in the workmen category placed at the tea garden of the company and who are governed by Plantation Labour Act, 1951 and workmen placed at the factories of the company, who are governed by the Industrial Employment (Standing Orders) Act, 1946.

Accordingly, Ministry of Heavy Industries and Public Enterprises, Deptt. of Heavy Industry vide memo no. 10(23)/-2011/PE.1 dated 03-11-2011, accorded approval for enhancement of the retirement age from 58 years to 60 years in respect of Board and Below Board Level and employees of Andrew Yule & Co. Ltd. governed by DPE guidelines with immediate effect. But such enhancement will not be applicable to the employees of Andrew Yule & Co. Ltd. who are governed by Industrial Employment (Standing Orders) Act, 1946 or Plantation Labour Act, 1951. On receiving such memo, the management of Andrew Yule & Co. Ltd. issued an Administrative Circular No. 2012/07 dated 01-03-2012 enhancing the age of retirement from 58 to 60 years for the Board Level and below Board Level Officer and Assistances on the Roll of the company on or after 03-11-2011.

Now, all the five workmen have alleged that all along they were posted at the Head Office of Andrew Yule & Co. Ltd. at Kolkata and which is governed by West Bengal Shops & Establishment Act and DPE guidelines. The Head Office is neither a tea garden governed by Plantation Labour Act, 1951 nor a Factory being governed by the Industrial Employment (Standing Orders) Act, 1946. It has also been alleged that there was a tripartite settlement dated 04-02-2011 under Industrial Disputes Act, 1947 in between the management of Andrew Yule & Co. Ltd. and its workmen posted at the Head Office for compliance of retirement age fixed by the Ministry.

They have alleged that in violations of memo no. 10(23)/-2011/PE.1 dated 03-11-2011 issued by Ministry of Heavy Industries and Public Enterprises, Deptt. of Heavy Industry, they have been retrenched from their respective services on their attaining the of 58 years. That they have raised objection in writing against their premature retirement before the management of Andrew Yule & Co. Ltd. in the year 2012 itself but of no avail. Then they made a complaint before the Regional Labour Commissioner (Central), Kolkata, but who failed to resolve their dispute and referred their matter to the Ministry for making reference before Industrial Tribunal.

That they have alleged that due to premature retirement they have suffered financial loss and they have claimed the losses suffered due to premature retirement and other consequential financial benefits.

The management of Andrew Yule & Co. Ltd. contested the claim of all those five workmen by filing five separate written statements and where it has taken the same stand and alleged that all those five workmen were members of Andrew Yule & Co. Ltd. Workmen's Union (Calcutta Region) and they being unionised employees of the company are governed by tripartite settlement or bipartite settlement executed between the management and their unions. They are not governed by D.P.E. guidelines. That there was tripartite settlement executed between the management of the company and the unions on 04-02-2011 and where it was settled that retirement age of unionised workmen would be 58 years and they would superannuated on the last working days on their attaining the age of superannuation in terms of their date of birth recorded in their Service Books. Such tripartite settlement was in force at the time of retirement of those employees.

It has also alleged that in Andrew Yule & Co. Ltd. there are four categories of employees namely (1) Officer Category, (2) Non-unionised Staff, who are exclusively governed by DPE guidelines, (3) Unionised Staff other than tea garden employees who are governed by tripartite agreement arrived at the intervention of Labour Commissioner and (4) Tea Garden workers governed by Plantation Labour Act, 1951. That Memo no. 10(23)/ 2011-PE-1 dated 03-11-2011 issued by Ministry of Heavy Industries and Public Enterprise, Govt. of India was/ is applicable to the employees of Andrew Yule & Co. Ltd. who comes within the purview of DPE guidelines and those who were /are Board Level, below Board Level and Assistance and not to those employees who are governed by the Industrial Employment (Standing Orders) Act, 1946, Plantation Labour Act, 1951 and unionised workmen.

Further, it has alleged that all the employees were intimated about the date of their retirement in advance by issuing notices to them. That all those employees on receiving such retirement notices made application for final withdrawal of their provident fund. That they were paid their provident fund, leave encashment and gratuity on the date of their superannuation and which they accepted without any objection and that too by issuing receipts to that effect. So, it has alleged that all five case are barred by principle of acquiescence, estoppel and not maintainable. It has prayed for dismissal of all five reference cases.

The concerned workmen have filed rejoinder and where they have invariably reiterated what they have alleged in their claim statements.

All five workmen to prove their cases have filed their evidence in chief on affidavit. That they have tendered their evidence on affidavit and cross examined by the management of Andrew Yule & Co. Ltd.

The management of Andrew Yule & Co. Ltd too has produced Mr. Satyendra Kumar Pandey, Dy. Manager (Personnel & Administration) as M. W.1 and who was extensively cross examined by all the five workmen.

Parties have produced same set of following documents and which have been marked as exhibits. Following documents have been filed from the side of workmen and exhibited:-

- 1) Appointment letters of Sri Naresh Kumar Chakraborty dt. 13-08-1979 as a Typist, Appointment letters of Sri Mihir Koley dt. 19-03-1980 as a probationer Driver, Sri Joydeb Chatterjee dt. 28-08-1987 as a Typist, Sri Samarendra Nath Mukherjee dt. 05-07-1990 as a Durwan and that of Sir Subhash Chandra Naskar dt. 30-09-1985 as a Clerk.

- 2) Confirmation letters dt.14-02-1980 and 12-03-1982 of Sri Naresh Kumar Chakraborty and Sri Mihir Kr. Koley.
- 3) Copy of DPE guidelines dt. 19-05-1998 whereby retirement age of below Board Level employees of Central PSEs was raised from 58 to 60 years but on certain conditions,
- 4) DPE guidelines dt.20-04-2007 whereby retirement age of Board and below Board Level employees of profit earning Central Public Sector Enterprises was enhanced from 58 to 60 years on fulfilment of certain conditions,
- 5) Extract of minutes of meeting of Board of Directors of Andrew Yule & Co. Ltd. held on 27-07-2011,
- 6) Copy of letter dt. 03-08-2011 of Andrew Yule & Co. Ltd. in respect of revision of pay scales of Board Level and below Board Level Executives and non-unionised Supervisors and enhancement of retirement age from 58 to 60 years of the employees of company,
- 7) Copy of company's letter dt.30-09-2011, 25-07-2013 to Deptt. of Heavy Industries, where it was clarified that retirement age of unionised employees in the workmen category, placed at the Tea Gardens of the company being governed by the Plantation Labour Act, 1951 and workmen placed at the factories of the company governed by the Industrial Employment (Standing Orders) Act, 1946 was/ is fixed at 58 years and had enclosed a chart depicting the age of Officers and Assistances of the company with their date of retirement year-wise.
- 8) The letter dt. 03-11-2011 of Ministry of Heavy Industries & Public Enterprises, Govt. of India addressed to Chairman & M.D., Andrew Yule & Co. Ltd., whereby the retirement age of the employees of Andrew Yule & Co. Ltd. belonging to Board Level and below Board Level and those employees governed by DPE guidelines was enhanced from 58 to 60 years and such benefit was not extended to those employees of Andrew Yule & Co. Ltd. who are governed by the Industrial Employment (Standing Orders) Act, 1946 and those governed by Plantation Labour Act, 1951.
- 9) Administrative circular dt. 01-03-2012 issued by Andrew Yule & Co. Ltd. increasing the age of retirement from 58 to 60 years only to Board Level and below Board Level and Assistance and not to the other categories of its employees,
- 10) The memorandum of settlement dt. 04-02-2011 executed in between management of Andrew Yule & Co. Ltd. and their unions before Regional Labour Commissioner (C), Kolkata,
- 11) Copy of notices of retirement dt. 13-10-2011 issued to Sri Naresh Kumar Chakraborty, to Sri Mihir Koley who were going to attained the age of superannuation on 31-12-2011, to Sri Joydeb Chatterjee on 22-12-2011 who was going to attain age of superannuation on 31-01-2012, to Sri Samarendra Nath Mukherjee on 26-04-2012 who was going to retire on 30-06-2012 and to Sir Subhash Chandra Naskar on 13-10-2011 and who was going to retire on 31-12-2011.
- 12) Copy of joint petition dt. 06-07-2012 submitted by Sri Naresh Kumar Chakraborty, Sri Subhash Naskar, Sri Mihir Koley, Sri Joydeb Chatterjee and Sri Samarendra Nath Mukherjee to the Director (Personnel), Andrew Yule & Co. Ltd., Kolkata,
- 13) Copy of petition dt.20-07-2012 of Sri Naresh Kr. Chakraborty to Dy. Secretary, Govt. of India, Ministry of Heavy Industries & Public Enterprises,
- 14) Copy of reply dt. 26-09-2012 by Andrew Yule & Co. Ltd. to Sri Naresh Kr. Chakraborty,
- 15) Copy of complaint dt.23-05-2012, 30-11-2012, and 04-04-2013 of Sri Naresh Kr. Chakraborty and Sri Mihir Kr. Koley to R.L.C/ A.L.C, Kolkata,
- 16) Copy of letters of Sri Naresh Kr. Chakraborty, Sri Mihir Kr. Koley, Sri Joydeb Chatterjee, Sri Samarendra Nath Mukherjee and Sir Subhash Chandra Naskar to Director, Andrew Yule & Co. Ltd. dt. 26-11-2012 and 04-02-2013
- 17) Copy of self-prepared list by Sri Naresh Kr.Chakraborty, Sri Mihir Kr. Koley, Sri Joydeb Chatterjee, Sri Samarendra Nath Mukherjee and Sir Subhash Chandra Naskar, projecting names of those workmen of Andrew Yule & Co. Ltd. posted at Head Office and who have been retained beyond the age of 58 years.
- 18) Copy of letter of Andrew Yule & Co. Ltd. dt. 18-02-2013 to ALC(C), Kolkata,
- 19) Copy of proceeding before ALC (C), Kolkata dt. 20-03-2012 and 02-05-2013,
- 20) Copy of Andrew Yule & Co. Ltd.'s letter dt.05-10-2011 addressed to Jt. Secretary, Ministry of Heavy Industries showing details of no. of employees of Andrew Yule & Co. Ltd. in the category of Officer governed by DPE guidelines, non-unionised staff governed by DPE guidelines, unionised staff other than tea garden governed by tripartite settlement and tea garden workers governed by Plantation Labour Act, 1951.

On the other hand following documents have been exhibited from the side of management:-

1. Copy of letter dt.03-08-2011 of Ministry of Heavy Industries and Public Enterprises, Deptt. of Heavy Industry addressed to Chairman-Managing Director, Andrew Yule & Co. Ltd. with regard to enhancement of age of retirement from 58 to 60 years in respect of certain categories of the employees of Andrew Yule & Co. Ltd.
2. Copy of letters of settlement of P.F. account dt.20-12-2011, 12-12-2011, 27-12-2011, 21-06-2012 and 12-12-2011 submitted by Sri Naresh Kr. Chakraborty, Workman No.607, Tea Division, Sri Mihir Koley, Sri Joydeb Chatterjee, Workman no.660, Tea Division, Sri Samarendra Nath Mukherjee, Workman No.376 and Sir Subhash Chandra Naskar, Workman No.630 to the Trustee of Andrew Yule & Co. Ltd. Provident Fund Instn. for the Indian Clerical Staff.
3. Copy of mandate forms along with a receipts showing payment of Rs.1,85,656.49, Rs.5,20,847/-, Rs.3,38,350.86P and Rs.3,00,905.12P towards provident fund to Sri Naresh Kr. Chakraborty, Sri Mihir Koley, Sri Joydeb Chatterjee and Sir Subhash Chandra Naskar on 30-12-2011, 31-01-2012 and on 30-12-2011.
4. Copy of receipts issued by Sri Naresh Kr. Chakraborty, Sri Mihir Koley, Sri Joydeb Chatterjee, Sri Samarendra Nath Mukherjee and Sri Subhash Chandra Naskar acknowledging receipt of Rs.2,70,230.33P towards leave encashment for 358 days, Rs.1,71,616/- towards leave encashment for 320 days, Rs.2,62,323.80P towards leave encashment Rs.1,69,630.93P towards leave encashment for 338 days and Rs.2,05,393.60P towards leave encashment for 330 days. It further shows that Rs.4,18,061.54P, Rs.2,97,027.69P, Rs.2,95,836.92P, Rs.1,91,095.38P and Rs.3,05,040/-towards gratuity to them on 30-12-2011, 31-01-2012, 29-06-2012 and on 31-12-2011.
5. Copy of retirement notices dt. 13-10-2011 addressed to Sri Naresh Kr. Chakraborty, Employee no.607 and Sri Mihir Koley, Employee No.288, informing them, their date of retirement on 31-12-2011, Copy of retirement notice dt. 22-12-2011 addressed to Sri Joydeb Chatterjee, , informing him, his date of retirement on 31-01-2012, to Sri Samarendra Nath Mukherjee dt.26-04-2012 informing him his date of date of retirement was on 30-06-2012 and copy of retirement notice of retirement dt. 13-10-2011 to Sir Subhash Chandra Naskar informing him his date of retirement to be on 31-12-2011.
6. Copy of Andrew Yule's letter dt. 24-04-2013 to ALC (C), Copy of ALC's letter dt. 05-04-2013 to Andrew Yule & Co. Ltd.
7. Copy of complaint petition of Sri Mihir Koley to RLC dt.02-04-2013,
8. Copy of letters dt.05-10-2011, 30-09-2011, 19-08-2013, 25-07-2013, 10-07-2013 addressed to Jt. Secretary, Heavy Industries and Public Enterprises, Deptt. of Heavy Industry by Andrew Yule & Co. Ltd. regarding revision in respect of age of superannuation from 58 to 60 years and pendency of Industrial Disputes on the date of retirement of the concerned workmen
9. Copy of appointment letter of Sri Naresh Kumar Chakraborty dt.13-08-1978,
10. Copy of confirmation letter dt. 14-02-1980 addressed to Naresh Kr. Chakraborty,
11. Copy of Memorandum of settlement dt. 04-02-2011.
12. Copy of failure reports dt. 17-05-2013 of ALC to Ministry of Labour & Employment.
13. Copy of letter dt. 30-12-2011, 31-01-2012, 28-06-2012 and 30-12-2011 addressed to Sri Naresh Kr. Chakraborty, Sri Mihir Koley, Sri Joydeb Chatterjee, Sri Samarendra Nath Mukherjee and Sir Subhash Chandra Naskar by Andrew Yule & Co. Ltd. disclosing the statement of their deposit in provident fund,
14. Copy of joint petition dt. 06-07-2012 submitted by Sri Naresh Kumar Chakraborty, Sri Subhash Naskar, Sri Mihir Koley, Sri Joydeb Chatterjee and Sri Samarendra Nath Mukherjee to the Director (Personnel), Andrew Yule & Co. Ltd., Kolkata,
15. Copy of letters of Sri Naresh Kr. Chakraborty, Sri Joydeb Chatterjee, Sri Samarendra Nath Mukherjee and Sir Subhash Chandra Naskar dt. 26-11-2012 and 04-02-2013 addressed to the Director (Personnel), Andrew Yule & Co. Ltd.
16. Copy of complaint of Sri Naresh Kr. Chakraborty, Sri Joydeb Chatterjee and Sir Subhash Chandra Naskar to R.L.C, Kolkata dt.30-11-2012 and on 02-04-2013,
17. Copy of letter of Andrew Yule & Co. Ltd. dt. 18-02-2013, 24-04-2013 to ALC(C), Kolkata,
18. Copy of letters dt. 10-07-2013, 05-10-2011 of Andrew Yule & Co. Ltd. to Ministry of Heavy Industries & Public Enterprises, Govt. of India,

19. Copy of notice of retirement dt. 13-10-2011 issued by Andrew Yule & Co. Ltd. to Sri Naresh Ch. Chakraborty,
20. Copy of administrative circular dt. 01-03-2012 issued by Andrew Yule & Co. Ltd.
21. Copy of wage policy of Board Level posts and below Board Level posts including non-unionised Supervisors in Public Sector Enterprises w.e.f. 01-01-1997,
22. Copy of letter dt. 26-11-2008 of Ministry of Heavy Industries & Public Enterprises, Deptt. of Public Enterprises with regard to revision of scales of pay w.e.f. 01-01-2007 in respect of Board Level and below Board Level Executives and non-unionised Supervisors,
23. Office memorandum dt. 19-07-2007, 20-04-2007 and 26-11-2008 of Ministry of Heavy Industries,
24. Copy of wage policy w.e.f. 01-01-1997,
25. Copy of appointment letter of Sri Joydeb Chatterjee dt. 28-08-1987,
26. Administrative circular dt. 01-03-2012 issued by Andrew Yule & Co. Ltd. increasing the age of retirement from 58 to 60 years only to Board Level and below Board Level and Assistance and not to the other categories of its employees,
27. Copy of letter dt. 03-11-2011 of Ministry of Heavy Industries to Chairman, Andrew Yule & Co. Ltd.
28. Copy of petition dt. 12-12-2011 of Sir Subhash Chandra Naskar for payment of his P.F. due before 31-12-2011 i.e. prior to his date of superannuation addressed to the Trustee Andrew Yule & Co. Ltd.
29. Copy of ALC's letter dt. 05-04-2013 to Sir Subhash Chandra Naskar.

Both sides have also filed their written notes of arguments.

Gone through the oral evidence of all the workmen and that of management witness Mr. Satyendra Kumar Pandey filed in the form of affidavit as well as that have been recorded by the Tribunal along with the documents that have been filed by workmen and management and from where it appears the only issue that need to be decided in the present five reference cases is “whether the age of superannuation of concerned workmen in the category of Typist, Clerk, Driver and Durwan of Andrew Yule Co. Ltd. posted at Head Office, Kolkata was 58 years or 60 years as claimed by them”?

The appointment letters and confirmation letters of those five workmen which have come on record do not disclose what their age of superannuation was at the time of joining the establishment of Andrew Yule & Co. Ltd. However, M.W.1 in his evidence recorded by the Tribunal under oath has admitted that when those five workmen joined the establishment of Andrew Yule & Co. Ltd., their age of superannuation was 60 years. Further, both sides have admitted that when Central Public Sector Enterprises were declare sick, then Cabinet roll back the age of superannuation of the employees of such sick CPSEs from 60 years to 58 years in respect of all categories of employees duly approved by the Board of Directors of such CPSEs in the month of August, 2001. Such decision was reviewed in April, 2005 and decided to enhance the age of retirement from 58 to 60 years only in respect of those employees working in those CPSEs who have started making profit for last three years continuously with positive net worth for last three years as per annual audited report, that CPSEs did not avail any budgetary support during the last three years and who will not avail budgetary support in future and left the decision for the Board of Directors of the CPSE concerned.

Further, the exhibited documents show that Ministry of Heavy Industries by issuing memo no. 10(23)/2011-PE1 dt. 03-11-2011 allowed Andrew Yule & Co. Ltd. to enhance the retirement age from 58 to 60 years only in respect of Board Level, below Board Level and those employees who comes within the purview of DPE guidelines, but not to those employees who are governed by Industrial Employment (Standing Orders) Act, 1946 or Plantation Labour Act, 1951. Therefore, here it is necessary to find out who are the employees who fall in the category of Board Level, Below Board Level and those governed by Industrial Employment (Standing Orders) Act, 1946 or Plantation Labour Act, 1951.

It is undisputed fact Andrew Yule & Co. Ltd., a Central Govt. Public Sector Enterprise/Undertaking under the ownership of Heavy Industries, Govt. of India. The majority of products and service offered by it and its subsidiaries are related to heavy industry and engineering and it also owns tea gardens/ tea estates including Hooghly Printing. It comes within the definition of an industry as defined in section 2(j) of The Industrial Disputes Act, 1947 as the establishment where more than 50 employees are engaged. Further, in view of provisions of section 2 (s) any person working in such industry and employed to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward and those Supervisors who draw less than Rs.10,000/- per month and who does not discharge managerial nature of job comes within the definition of workman. The Industrial Employment (Standing Orders) Act, 1946 applies to employees in industrial establishment with 50 or more employees. The Act regulates the condition of employment for these employees.

It is a matter of common sense, a person holding Board Level position in a Public or Private Sector Undertakings indicate such person who holds the position such as Chief Executive Officer, Managing Director, or such person who takes decision on behalf of the Corporation or the person who holds highest level of hierarchy in any organisation or who are part of the Board of Directors of the company.

A Below Board Level employee is an employee in Central Public Sector Enterprises who is not a member of Board of Directors but who holds managerial post and those who do not come within the definition of workman as provided in section 2(s) of Industrial Disputes Act, 1947.

The present five persons being employees of Andrew Yule & Co. Ltd. in the capacity of Clerk, Typist, Driver and Durwan squarely falls within the definition of workman. It is also admitted by all those workmen in their cross examination that they are the members of Andrew Yule & Co. Ltd. (Calcutta Region) Workmen's Union i.e. unionised employees.

It has also come on record that there was a settlement between the different unions of Andrew Yule & Co. Ltd. and the management before the Regional Labour Commissioner (Central), Kolkata on 04-02-2011, under provisions of section 12 (3) of the I.D. Act, 1947. It is noted that two of the workmen namely Sri Naresh Chakraborty and Sri Subhas Chandra Naskar, being the Assistant Secretary and Vice President of Andrew Yule & Co. Ltd. and its Group (Calcutta Region) Workmen's Union, were present and were the signatories of the said settlement. By executing such settlement it was agreed and settled that the superannuation age of unionised workmen of Andrew Yule & Co. Ltd. will be 58 years on and from the closing of business of the last working day of the English Calendar month in which the incumbent attains the age of superannuation in terms of his/her date of birth recorded, admitted and incorporated at the end of the Company at the time of commencement of employment is a Service Condition/terms for employment for all practical purposes and for all times to come in supersession/ cancellation/ abrogation/ discontinuance of all past practices, systems, procedures, circulars, notices, orders, understanding, settlement/s etc. However, Orders from the Ministry, if any, to be complied with. Provisions in respect of retirement age as contained in the Standard Office Procedure applicable for staff and sub-ordinate staff placed at the Registered Office of the Company stands superseded for all practical purpose.

Permanent employees appointed on any date prior to September 01, 1984, will retire and accordingly the contract of employment by an between the Company and the concerned employee will stand terminated on attaining the age of superannuation i.e. 58 years in terms of the date of birth recorded, admitted and incorporated at the end of the Company at the time of commencement of employment on and from the closing of business of last working day of the English calendar year the incumbent attains the age of superannuation. However, in case there is a change in the age of superannuation, the concerned employees will retire on and from the closing of business of the last working day of the English calendar month in he or she attains the age of superannuation according to the date of birth recorded, admitted and incorporated at the end of the Company at the time of commencement of employment provided the date of birth is other than 1st day of the English calendar month. In case, the date of birth is 1st day of the English calendar month the incumbent will retire and accordingly the contract of employment by and between the company and the concerned employee will stand terminated on and from the closing of business of the last working day of the previous calendar month. Date of birth in respect of each permanent employee/ workman recorded, admitted and incorporated at the end of the company at the time of commencement of employment shall remain unaltered for all practical purposes for all times to come.

It is true that Ministry of Heavy Industry by issuing memo no. 10(23)/2011-PE1 dt. 03-11-2011 had enhanced the retirement age of the employees of Andrew Yule & Co. Ltd. i.e. after the execution of the above settlement on 04-02-2011, but the above memo of Ministry of Heavy Industries has clearly provided that retirement age of Board Level, Below Board Level employees and those employees who are governed by DPE guidelines would be enhanced from 58 to 60 years but such benefit was not extended to those employees of Andrew Yule & Co. Ltd. governed by Industrial Employment(Standing Order) Act, 1946 and Plantation Labour Act, 1951.

Further, Andrew Yule Co. Ltd. by issuing an administrative circular no. 2012/07 dt. 01-03-2012 in pursuance of memo no. 10(23)/2011-PE1 dt. 03-11-2011 issued by Ministry of Heavy Industries had extended the benefit of enhancement of age of retirement only to the Board Level, Below Board Level Officers and Assistance on the Roll of the company and not to any other categories of employees of the company.

The present set of workmen not being Board Level, Below Board Level or Assistance, but who belong to the category of workman as defined in section 2(s) of I.D. Act, being unionised employees bounded by tripartite settlement dt. 04-02-20211 and employees governed by Industrial Employment (Standing Orders) Act, 1946 are not covered by the benefit of memo no. 10(23)/2011-PE1 dt. 03-11-2011.

Further, nothing has come on record to show that legality of memo no. 10(23)/2011-PE1 dt. 03-11-2011 issued by Ministry of Heavy Industries and the Administrative Circular no. 2012/07 dt. 01-03-2012, issued by Andrew Yule Co. Ltd. were challenged by the present set of workmen or by any employees of Andrew Yule & Co. Ltd. before any Court of Law. Thus, as per unchallenged memo dt. 03-11-2011 of Ministry of Heavy Industries and the administrative circular no. 2012/07 dt. 01-03-2012 issued by Andrew Yule Co. Ltd., the present set of workmen

have no locustandi to claim benefit of memo dt.03-11-2011 of Ministry of Heavy Industries and Administrative Circular dt.01-03-2012, which exclude them from benefit of enhanced age of retirement being workman category of employees.

Further, the workmen have failed to produce any subsequent settlement executed between the management of Andrew Yule & Co. Ltd. and unions, extending the benefits of memo no. 10(23)/2011-PE1 dt. 03-11-2011 and the administrative circular no. 2012/07 dt. 01-03-2012 issued by Andrew Yule Co. Ltd., superseding the settlement dt. 04-02-2011, where the retirement age of the workman category employees of Andrew Yule & Co. Ltd. was fixed at 58 years and by which they are bounded.

That apart, from the above mentioned exhibited documents, it is seen that all the five workmen were served with notice of their retirement 2/3 months prior to their actual retirement on their attaining age of 58 years by the company. It has come on record that none of those workmen who retired after December, 2011 have raised any objection against notices of retirement served upon them alleging that their retirement age was already enhanced to 60 years by virtue of memo no. 10(23)/2011-PE1 dt. 03-11-2011 issued by Ministry of Heavy Industries. It is very interesting to note that all workmen have accepted their retirement on attaining the age of 58 years without any qualms and by withdrawing their Provident Fund, accepting leave encashment and gratuity from the management of Andrew Yule & Co. Ltd. on the day they retired from the service. Then, a question may arise, how a workman who has received provident fund, leave encashment and gratuity from the employer can raise a dispute alleging that they have been illegally retrenched /terminated from the service by the employer on their attaining the age of 58 years as contended by them in their claim statements or their retirement was premature as contained in order of reference.

Further, those five workmen have failed to produce any official record and other independent witnesses to prove and corroborate that employees of Andrew Yule & Co. Ltd. in the category of unionised workman posted at Head Office were extended the benefit of memo no. 10(23)/2011-PE1 dt. 03-11-2011 issued by Ministry of Heavy Industries, post their retirement and as shown by them in their self-prepared list and which have been exhibited by them.

In view of the above discussion, this Tribunal is of view all the five workmen being unionised workmen, governed and bounded by the tripartite settlement executed in between the management and unions on 04-02-2011. They being employee in the category of a workman as defined in section 2(s) of Industrial Disputes Act, and governed by Industrial Employment (Standing Orders) Act, 1946 are not entitled to get the benefit of memo no. 10(23)/2011-PE1 dt. 03-11-2011 issued by Ministry of Heavy Industries and which has been given effect only to Board Level, Below Board Level and Assistance by Andrew Yule & Co. Ltd. by issuing administrative circular no. 2012/07 dt. 01-03-2012. Further, all workmen who have honourably acknowledged their age of superannuation on completion of age of 58 years and who have withdrawn all their deposit in provident fund and accepted leave encashment and gratuity from the employer, the day they superannuated from the service are barred by the principle of estoppel and acquiescence in raising the dispute alleging that they have been prematurely terminated from their services. In fact, this Tribunal holds the dispute raised by all the five employees claiming termination by way of premature retirement without extending the benefit of memo no. 10(23)/2011-PE1 dt. 03-11-2011 issued by Ministry of Heavy Industries to be speculative.

Hence, this Tribunal holds the claims of all five workmen are not maintainable. Accordingly Reference No. 36 of 2013, Reference No. 37 of 2013, Reference No.38 of 2013, Reference No. 39 of 2013 and Reference No. 43 of 2013 in respect of ex-workmen namely Sri Naresh Kumar Chakraborty, Sri Mihir Koley, Sri Joydeb Chatterjee, Sri Samarendra Nath Mukherjee, and Sri Subhas Chandra Naskar of Andrew Yule & Co. Ltd. are dismissed and an award to that effect is passed.

Justice K. D. BHUTIA, Presiding Officer

नई दिल्ली, 11 फरवरी, 2025

का.आ. 191.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार निदेशक, यूनिफाइड पावर प्राइवेट लिमिटेड, ग्रेटर नोएडा (यू.पी.); मुख्य महाप्रबंधक, नेशनल थर्मल पावर कॉर्पोरेशन लिमिटेड, सिंगरौली सुपर, थर्मल पावर स्टेशन, सोनभद्र (यू.पी.); उप महाप्रबंधक, भारत हेवी इलेक्ट्रिकल्स लिमिटेड, बीएचईएल नेशनल थर्मल पावर स्टेशन, शक्ति नगर, जिला सोनभद्र (यू.पी.), के प्रबंधन के संबद्ध नियोजकों और श्री छत्तू सिंह, कामगार, के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण-सह-श्रम न्यायालय, कानपुर, पंचाट (संदर्भ संख्या. 55 OF 2022) को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 11.02.2025 को प्राप्त हुआ था।

[सं. एल – 42011/07/2022-आईआर (डीयू)]

दिलीप कुमार, अवर सचिव

New Delhi, the 11th February, 2025

S.O. 191.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (ID. No. 55 OF 2022) of the **Central Government Industrial Tribunal cum Labour Court, Kanpur**, as shown in the Annexure, in the Industrial dispute between the employers in relation to **The Director, Unified Power Private Limited, Greater Noida (U.P.); The Chief General Manager, National Thermal Power Corporation Ltd., Singrauli Super, Thermal Power Station, Sonebhadra (U.P.); The Dy. General Manager, Bharat Heavy Electricals Limited, BHEL National Thermal Power Station, Shakti Nagar, Disst. Sonebhadra (U.P.), and Shri Chhattoo Singh, Worker**, which was received along with soft copy of the award by the Central Government on 11.02.2025.

[No. L-42011/07/2022-IR (DU)]

DILIP KUMAR, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL –CUM- LABOUR COURT, KANPUR

PRESENT

JUSTICE ANIL KUMAR

PRESIDING OFFICER

I.D. No. 55/2022

Ref. No.L-42011/07/2022 (IR (DU)) dated 30.05.2022

BETWEEN

Shri Chhattoo Singh, Zonal Secretary, Janta Mazdoor Sangh,
B/439, Northern Coalfield Ltd., Khadiya, Disst. Sonebadra (U.P.) – 231222

AND

1. **The Director, Unified Power Private Limited,**
Corporate Office, Plot No. 6 Mahila Udyam Park-I,
Ecotech- 3 Greater Noida (U.P.) - 201306.

2. **The Chief General Manager,**
National Thermal Power Corporation Ltd., Singrauli Super, Thermal Power Station, Shakti Nagar,
Disst. Sonebhadra (U.P.)- 231222.

3. **The Dy. General Manager,**
Bharat Heavy Electricals Limited, BHEL Site Office, National Thermal Power Station, Shakti Nagar,
Disst. Sonebhardra (U.P.) – 231222.

AWARD

By order No. L-42011/07/2022 (IR (DU)) dated 30.05.2022 the present industrial dispute has been referred for adjudication to this Tribunal in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 the Industrial Disputes Act, 1947 (14 of 1947) by the Central Government, with following schedule:

“Whether action of the Janta Mazdoor Sangh, Sonebhadra vide letter dated 27.07.2021 i.r.o. 75 contract workers (letter dated 23.12.2021 list attached) that these workers were terminated w.e.f. 07.07.2021 from their services by M/s Unified Power Pvt. Ltd. sub-contractor of Bharat Heavy Electricals Ltd. (BHEL), Sonebhadra (Contractor) under National Thermal Power Corporation Ltd., Singrauli Super Thermal Power Station, Shakti Nagar, Sonebhadra is proper, legal and justified? If yes, to what reliefs the disputant are entitled and what other directions, if any, are necessary in the matter?”

Accordingly, an industrial dispute No. 55/2022 has been registered before this Tribunal.

On 02.08.2022 an order was passed which is quoted as below:

“A.R. Shri V.K. Gupta appears for N.T.P.C. and A.R. Shri S.N. Singh appears for Unified Power Pvt. Ltd. None appears on behalf of the claimant side.

Case is fixed to 28.09.2022 for filing claim statement.”

Further from the perusal of record the position which emerge out that thereafter several date was fixed for filing statement of claim in spite of opportunity no statement of claim was not filed.

On 20.07.2023 following order was passed which is quoted as below:

“A.R. for O.P. side appears. None appears on behalf of the claimant side.

Case is fixed to 21.09.2023 for filing claim statement as last chance.”

However, in spite of the notice none appeared on behalf of the claimant on 21.09.2023. So on the said date again time was granted to file claim statement.

Today when the matter was taken up in the revised cause list neither the claimant nor his authorized representative is present.

Heard Shri S.N. Singh authorized representative on behalf of Unified Power Private Ltd./ Respondent and gone through the record.

Findings & Conclusion:

Taking into consideration the fact as stated above that till date no statement of claim filed by the claimant in response to the reference dated 30.05.2022.

So in view of the said facts, as well as the law laid by the Hon’ble High Court in the case of **V. K. Raj Industries v. Labour Court (I) and others 1981 (29) FLR 194** as under:

“It is well settled that if a party challenges the legality of an order, the burden lies upon him to prove illegality of the order and if no evidence is produced the party invoking jurisdiction of the Court must fail. Whenever a workman raises a dispute challenging the validity of the termination of service if is imperative for him to file written statement before the Industrial Court setting out grounds on which the order is challenged and he must also produce evidence to prove his case. If the workman fails to appear or to file written statement or produce evidence, the dispute referred by the State Government cannot be answered in favour of the workman and he would not be entitled to any relief.”

In the case of **M/s Uptron Powertronics Employees’ Union, Ghaziabad through its Secretary v. Presiding Officer, Labour Court (II), Ghaziabad and others 2008 (118) FLR 1164** Hon’ble Allahabad High Court has held as under:

“The law has been settled by the Apex Court in case of Shanker Chakravarti v. Britannia Biscuit Co. Ltd., V.K. Raj Industries v. Labour Court and Ors., Airtech Private Limited v. State of U.P. and Ors. 1984 (49) FLR 38 and Meritech India Ltd. v. State of U.P. and Ors. 1996 FLR that in the absence of any evidence led by or on behalf of the workman the reference is bound to be answered by the court against the workman. In such a situation it is not necessary for the employers to lead any evidence at all. The obligation to lead evidence to establish an allegation made by a party is on the party making the allegation. The test would be, who would fail if no evidence is led.”

And by the Hon’ble Allahabad High Court in the case of **District Administrative Committee, U.P. P.A.C.C.S.C. Services v. Secretary-cum-G.M. District Co-operative Bank Ltd. 2010 (126) FLR 519**; wherein it has been held as under:

“The submission is that even if the petitioner failed to lead the evidence, burden was on the shoulders of the respondent to prove the termination order as illegal. He was required to lead evidence first which he failed. A perusal of the impugned award also does not show that any evidence either oral or documentary was led by the respondent. In the case of no evidence, the reference has to be dismissed.”

As the workman has not filed any statement of claim/oral/documentary evidence, so the present case is liable to be dismissed.

For the foregoing reasons, the case is dismissed and; and the workman is not entitled for any relief.

Award as above.

Kanpur.

09th February, 2024

Justice ANIL KUMAR, Presiding Officer

Let two copies of this award be sent to the Ministry for publication.

नई दिल्ली, 12 फरवरी, 2025

का.आ. 192.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार महाप्रबंधक, बीएसएनएल, दूरसंचार जिला, गुंटूर, के प्रबंधन के संबद्ध नियोजकों और श्री एस. मोहन सरथ बाबू, कामगार, के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण- सह-श्रम न्यायालय- हैदराबाद पंचाट (संदर्भ संख्या 23/2009) को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 12.02.2025 को प्राप्त हुआ था।

[सं. एल – 40012/33/2009-आईआर (डीयू)]

दिलीप कुमार, अवर सचिव

New Delhi, the 12th February, 2025

S.O. 192.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. ID. No. 23/2009) of the **Central Government Industrial Tribunal cum Labour Court– Hyderabad** as shown in the Annexure, in the Industrial dispute between the employers in relation to **The General Manager, BSNL, Telecom District, Guntur, and Shri S. Mohan Sarath Babu, Worker**, which was received along with soft copy of the award by the Central Government on 12.02.2025.

[No. L-40012/33/2009-IR (DU)]

DILIP KUMAR, Under Secy.

ANNEXURE**IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT AT HYDERABAD**Present: **Sri IRFAN QAMAR**

Presiding Officer

Dated the 4th day of February, 2025

INDUSTRIAL DISPUTE No. 23/2009

Between:

Sri S. Mohan Sarath Babu,

S/o Hanumantha Rao,

R/o D.No.26-34-13/ C.A.T., Agraharam,

9th Lane, Guntur –522004.

..... Petitioner

AND

The General Manager,

BSNL, Telecom District,

Guntur.

.... Respondent

Appearances:

For the Petitioner : M/s. G. Vidyasagar, K. Udayasree & P. Sudheer Rao, Advocates

For the Respondent: Sri S. Prabhakar Reddy, Advocate

AWARD

The Government of India, Ministry of Labour by its order No. L-40012/33/2009-IR(DU) dated 21.5.2009 referred the following dispute under section 10(1)(d) of the I.D. Act, 1947 for adjudication to this Tribunal between the management of BSNL and their workman. The reference is,

SCHEDULE

“Whether the action of the management of BSNL, Guntur in terminating the services of their workman Shri S. Mohan Sarath Babu w.e.f. 6.8.2008 is legal and justified? If not, what relief the workman is entitled to?”

The reference is numbered in this Tribunal as I.D. No. 23/2009 and notices were issued to the parties concerned.

2. **The averments made in the claim statement are as follows:**

It is submitted that the Petitioner joined the Central Telegraph Office as Telegraphic Messenger on 9.1.2003. He worked continuously and discharged his duties as Telegraphic Messenger with utmost satisfaction of his superiors. It is submitted that there were about 8 Telegraphic Messengers working at Guntur circle and they used to work for more than 10 hours in different shifts as per the allotment of shifts by the Respondent Management. The Respondent used to pay Rs.20/- per day for the line works and Rs.1/- for each telegram. Now, the workmen are being paid Rs.40/- per day and Rs.2/- per each Telegram for delivering telegraphic messages. The Petitioner has to take his own cycle and deliver the same nook and corner villages. Though, the amount paid to the workmen is meager, they are discharging duties under the fond hope that their services would be regularized and that they would be paid regular scale of pay. Since workman worked considerable length of time, they made representations to the Respondent requesting for regularization of the services and also for regular scale of pay. On the ground that the workmen made representation for regularization and other benefits, they were informed orally that they need not attend for duties w.e.f. 6.8.2008. Immediately, workman approached the authority requesting to continue the services of the workmen as Telegraphic Messenger. However, the Respondent has not taken him into service. Therefore, the services were terminated orally with effect from 06/08/2008 which is wholly illegal arbitrary and unjust. It is submitted that as there was no other alternative, the BSNL contract casual employees and labour Union, approached the Assistant Commissioner of Labour(Central) Vijayawada, later the dispute was referred to this Tribunal hence, this ID. It is submitted that Petitioner worked in the Respondent with the meager salary under the fond hope that his services would be regularized in future and he will get benefits to which he is entitled to from the date of his appointment. But, till date, the Respondent has not regularized the services of the Petitioner. When Petitioner along with others formed Union and made representation with regard to grievances of the workman, the Respondent started victimizing against the Petitioner and other workmen and ultimately their services were terminated w.e.f. 6.8.2008 without assigning any reasons. It is submitted that after disengaging the services of the workman, the Respondent has engaged other workmen viz., Sri K. Nagabhushanam, Sri Subba Rao, and Sri Goverdhan as Telegraphic Messengers, which is wholly illegal, arbitrary and contrary to the provisions of the Industrial Dispute Act, 1947. Further the Respondent have called for tenders for delivery of "C" Telegrammes work and work order has been issued to M/s. Rana Man Power & Placement Services Private Limited, Guntur, to that effect Petitioner herein filing payment bills vide Bill Dt. 11/03/2010 and 11/04/2010. It is submitted that the workman has worked for more than 4 to 5 years of continuously without any break, and the workman has completed more than 240 days in a calendar year. Hence, the workman is entitled to notice, notice pay before termination from the employment. However, the Respondent has not issued any notice nor any compensation in lieu of notice as per Section 25 of Industrial Disputes Act, 1947. Hence, the Respondent has violated the Section 25 of Industrial Disputes Act, therefore, the termination is illegal and the workman is entitled to reinstatement with all consequential benefits. It is further submitted that the Hon'ble Supreme Court in catena of decisions held that the temporary employee cannot be replaced by another temporary employee. In the given case, all the workmen have been disengaged by engaging fresh workmen as Telegraphic Messenger, which is nothing but violation of Section 25 (g) and (h) of Industrial Disputes Act. It is submitted that as per 25 (G) and (H) seniority list of employees has to be prepared and no such seniority list is prepared. It is submitted that though the workman continuously worked more than 240 days in a calendar year, the Respondent used to pay the wages for five days in factious names in order to avoid regularization and other benefits, to which the workman is entitled to. It is submitted that the workman did not secure any employment in any other organization on the ground that his services would be absorbed in the Respondent organization. By virtue of oral termination, the workman was deprived of livelihood. It is therefore prayed to declare the action on part of the Respondent in terminating the services of the Petitioner orally w.e.f. 6.8.2008 is illegal, arbitrary and unjust and consequently directing the Respondent to reinstate the Petitioner into service, with continuity of service, full back wages and other attendant benefits.

3. **Respondent filed counter denying the averments of the Petitioner as under:-**

It is further submitted that the BSNL Contract Casual Employees and Labour Union is not having any locus standi to espouse the cause of Petitioner herein. It is submitted that the Respondent engaged the Petitioner for delivery of telegrams occasionally on coolie basis and he was paid Rs.2/- per delivery of each telegram vide orders of the General Manager, Telecom No.A31/ACTTS/MISC2001-02 dated 03.12.2001. The Petitioner was neither recruited nor appointed as Telegram Messenger in the Respondent organization. There is no privity of contract between the Petitioner and Respondent. There is no employee employer relationship between the Petitioner and Respondent. Therefore the Petitioner can not avail the provisions of Industrial Disputes Act, 1947. It is further submitted that, the Respondent did not appoint the Petitioner and there is no privity of contract and therefore the question of removing his services by the Respondent does not arise. It is further submitted that the Hon'ble Apex Court in the case of Secretary, State of Karnataka Vs Uma Devi (3) reported in 2006 (4) SCC 1 was pleased to held that absorption, regularization or permanent continuance of temporary, contractual, casual, daily wage or adhoc employee appointed/ recruited deforms the constitutional scheme or public employment on issuance of directions by court and issuance of such directions amount to creating another mode of public employment which is not permissible. In the present case the Respondent engaged the Petitioner only for delivery of telegrams occasionally on coolie basis and he was paid Rs.2/- for delivery of each telegram and therefore the Petitioner is not having any right to seek employment with the Respondent. Moreover the Petitioner without intimating to the Respondent stopped coming to deliver the telegrams.

Therefore he can not claim that the Respondent engaged him and terminated his services. Viewed from any angle the claim of the Petitioner is frivolous and therefore the Petitioner is not entitled for any relief. The contentions of the Petitioner that he joined Central Telegraph Office as Telegraphic Messenger on 9.1.2003, worked continuously, discharged his duties as Telegraphic Messenger with utmost satisfaction of his superiors etc., false, baseless and not tenable and the Petitioner may be put to strict proof of the same. It is submitted that the Respondent engaged the Petitioner for delivery of telegrams occasionally and in view of the same the allegations mentioned by the Petitioner are false and untenable. Further, it is submitted that the Petitioner and other personnel engaged by the Respondent for delivery of telegrams occasionally on coolie basis on payment of Rs.2/- for delivery of each telegram they were neither recruited nor appointed as telegram messengers in the Respondent organization. Therefore the question of terminating his services orally w.e.f. 06.08.2008 by the Respondent does not arise. The Petitioner without intimating to the Respondent stopped coming to deliver the telegrams. The further contention of the Petitioner that the workman worked considerable length of time, they made representations to the Respondent requesting for regularization of the services and also for regular pay of scale etc., is untenable. The Petitioner engaged for delivery of telegrams occasionally on coolie basis by paying Rs.2/ per telegram is not entitled for regularization. The union is not having any locus standi to represent or espouse the cause of the Petitioner since the Petitioner is not a workman as defined under Section 2 (s) of the I.D.Act and therefore he can not be represented by the said union. It is submitted that Respondent never informed the Petitioner that his services will be regularized in future since the Respondent never recruited or appointed him as Telegram messenger and he was engaged only for delivery of telegrams on piece rate basis. Therefore when there is no employee employer relationship and Petitioner stopped delivery of messages without intimation, the question of termination of his services by the Respondent does not arise. It is submitted that a tender was called for delivery of telegrams and work order has been issued to M/s.Rana Man Power and Placement Services Private Limited, Guntur since there is no alternative to the Respondent to do the same as the Petitioner and other similarly situated personnel who were engaged for the purpose of delivery of telegrams stopped delivery of telegrams without intimation. The other allegations with regard to violation of provisions of I.D.Act etc., are false and untenable. The question of violation of Section 25 (G) and (H) of the I.D.Act by the Respondent does not arise. The contentions of the Petitioner that the junior to him was considered for employment is denied for the reason that the Petitioner is not an employee of the Respondent. The Petitioner was engaged for delivery of telegram occasionally on coolie basis and he never continuously engaged for 240 days in a calendar year as employee of the Respondent. He was not paid either daily or monthly wages. The Respondent never informed the Petitioner that his services would be absorbed in BSNL Organization. He was never recruited, neither appointed nor was terminated and hence the question of reinstatement does not arise. In view of the above, the petition be dismissed as devoid of merits.

4. Heard arguments of Learned Counsels for both the parties as well as perused written arguments.

5. On the basis of rival contentions and pleadings of both the parties, following issues emerge for determination in the instant matter:-

- I. Whether the action of Respondent Management of BSNL, Guntur in terminating the services of Petitioner Sri S. Mohan Sarath Babu with effect from 6.8.2008 is legal and justified?
- II. Whether the Petitioner is entitled for regularization?
- III. Whether the Petitioner is entitled for the relief claimed?

Findings:-

6. **Point No.I:-** It is the claim of the Petitioner that he joined the service of the Central Telegraph Office as telegraphic messenger on 9.1.2003 and he worked for more than 4 to 5 years continuously without any break. Petitioner submits that he has completed more than 240 days in a calendar year hence, he is entitled to notice, notice pay before terminating from the employment. However, Respondent did not issue any notice nor paid compensation in lieu of notice under Section 25F of ID Act and Respondent has terminated Petitioner from service in violation of the provision contained under section 25 F of ID Act and termination order of Petitioner is illegal and he is entitled to reinstatement in the service with all consequential benefits. Further, Petitioner submits that Supreme Court in catena of decisions has held that temporary employee cannot be replaced by another temporary employee. In the instant matter all the workers have been disengaged by engaging fresh workmen as telegraphic messengers by the Respondent in violation of section 25G and H of I.D. Act, 1947. Thus, Petitioner claims that his termination order dated 6.8.2008 be set aside and Respondent be directed to reinstate him into service.

7. In support of plea in evidence Petitioner, has filed affidavit of WW1 wherein witness has reiterated the averments made in the claim statement, WW1 states that his service was terminated orally on 6.8.2008 by the Respondent in contravention of the provision of Section 25 F of the I.D. Act. WW1 was cross examined by the Respondent counsel and in his cross examination, WW1 states as under:-

“No appointment letter was issued to me for delivery of telegrams. It is not true to suggest that Respondent used to take work from me as and when required. It is true that as per Ex.W17, I have worked 18 days in the month of

June, 2006 and 21 days in the month of July, 2006. It is not correct to say that I have not worked 240 days in any calendar year. The Witness volunteers that he has worked 360 days in a year without any holidays. I have not given any complaint to the Labour Department complaining that Respondent is taking our service in the holidays. I have not given any complaint that though I have worked under the Respondents but instead of my name, others name have been mentioned in the record. I have not made any complaint to that effect. It is not true to suggest that management has not appointed me as telegram messenger. Therefore the question of terminating me on 6/8/2008 does not arise."

From the above statement of WW1 it manifest that workman did not complete 240 days continuous service in the year 2006. Further, Petitioner was not issued any appointment letter therefore, it is established that he had worked as a daily wager in the Respondent office.

8. Further, WW1 was cross examined by the Respondent regarding documents, Ex.W21 the bunch of photo copies, to which Petitioner claims that it pertains to the allotment of duty charts and work chart, details of messengers, timings of duty hours and payment of bills pertaining to Petitioner for the period from 9.1.2003 to till date of termination i.e., 6.8.2008. WW1 in his cross examination states:-

"It is true that Ex. W21 pertains to only for the years 2006 and 2007. It is not true to suggest that Ex.W21 dates are not continuously appearing. I have obtained the Xerox copies of Ex.W21 from one Mr Anand Rao, Attendar in the year 2007. It is not true to suggest that I have prepared Ex. W21 and filed before this Court. The Ex.W21 contains the signature of Sr. Assistant and rubber stamp pertains to Sub Divisional Engineer. It is not true to suggest to that Ex.W21 does not disclose that I have worked for 240 days in the Respondent. It is not true to suggest that I have fabricated the document Ex.W21 for the purpose of this case."

It manifest from the above statement of WW1 that he has not filed any document of duty chart and timings of duty hours and payment of bill pertaining to year 2008 in which he was terminated. These photocopies pertains to the year 2006 and 2007 only. Now, we proceed to examine the evidence led by the Petitioner on record in support of his claim.

9. It is settled law that for taking a plea about retrenchment in violation of provision of Section 25 F of ID Act, the workman has to establish that he has been in continuous service for not less than one year or 240 days continuously in service in a calendar year just preceding from the date of his termination, under that employer who has retrenched him from service.

Before evaluating evidence on record in support of claim of Petitioner, it would be relevant to reproduce here the provision of Section 25 B of ID Act which defines the term continuous service of Workman, that reads as under:-

Section 25B defines the term continuous service which provides

Definition of continuous service.- For the purposes of this Chapter,--

(1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorized leave or an accident or a strike which is not illegal, or a lock- out or a cessation of work which is not due to any fault on the part of the workman;

(2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer--

(a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than--

(i) one hundred and ninety days in the case of a workman employed below ground in a mine; and

(ii) two hundred and forty days, in any other case;

Further, Hon'ble Supreme Court in its number of decisions has elaborated the concept of continuous service in a calendar year u/s 25F of I.D. Act as required for valid retrenchment under I.D. Act, 1947 and few decision are discussed as follows:-

In the case of **Sur Enamel and Stamping works Private Limited Vs. their workmen**, referring to Section 25 B, Hon'ble Supreme Court has defined the term continuous service as under:-

"The position therefore is that during a period of employment for less than 11 calendar months these two persons worked for more than 240 days. In our opinion that would not satisfy the requirement of section 25B. Before a workman can be considered to have completed one year of continuous service in an industry it must be shown first that he was employed for a period of not less than 12 calendar months and, next that during those 12 calendar months had worked for not less than 240 days. Where, as in the present case, the workmen have not at all been employed for a period of 12 calendar months it becomes unnecessary to examine whether the actual days of work numbered 240 days or more. For, in any case, the requirements of section 25B would not be satisfied by the mere fact of the number of working days being not less than 240 days."

In Mohan Lal Vs. Management of M/s. Bharat Electronics, dated 21.4.1981 AIR 1981 Supreme Court 1253, the Hon'ble Supreme Court have held,

It was, however, urged that section 25F is not attracted in this case for an entirely different reason. Mr. Markendaya contended that before section 25F is invoked, the condition of eligibility for a workman to complain of invalid retrenchment must be satisfied. According to him unless the workman has put in continuous service for not less than one year his case would not be governed by section 25F. That is substantially correct because the relevant provision of section 25F provides as under:

"25F. "No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until:-

(a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;

Provided that no such notice shall be necessary if the retrenchment is under an agreement which specifies a date for the termination of service;

(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent of fifteen days' average pay (for every completed year of continuous service) or any part thereof in excess of six months; and

(c) notice in the prescribed manner is served on the appropriate Government (or such authority as may be specified by the appropriate government by notification in the Official Gazette)."

Reverting to the facts of this case, admittedly the appellant was employed and was on duty from December 8, 1973 to October 19, 1974 when his service was terminated. The relevant date will be the date of termination of service, i.e. October 19, 1974 Commencing from that date and counting backwards, admittedly he had rendered service for a period of 240 days within a period of 12 months and, indisputably, therefore, his case falls within section 25B(2) (a) and he shall be deemed to be in continuous service for a period of one year for the purpose of Chapter VA."

In Rajasthan State Ganganagar S. Mills Ltd. v. State of Rajasthan and Anr. (2004) Apex Court held:

"It was the case of the workman that he had worked for more than 240 days in the year concerned. This claim was denied by the appellant. It was for the claimant to lead evidence to show that he had worked for 240 days in the year preceding the date of his termination. He has filed an affidavit. It is statement which is in his favor and that cannot be regarded as sufficient evidence for any Court or Tribunal to come to the conclusion that in fact the claimant had worked for 240 days in a year These aspects were highlighted in Range Forest Officer v. S.T. Hadimani (2002 (3) SCC 25. No proof of receipt of salary or wages for 240 days or order or record in that regard was produced. Mere non-production of the muster roll for a particular period was not sufficient for the Labour Court held that the workman had worked for 240 days as claimed."

In Municipal Corporation, Faridabad v. Siri Niwas (2004 (8) SCC 195), held "the burden was on the workman to show that he was working for more than 240 days in the preceding one year prior to his alleged retrenchment." In M.P. Electricity Board v. Hariram (2004 (8) SCC 246) the position was again reiterated in paragraph 11 as follows: "The above burden having not been discharged and the Labour Court having held so, in our opinion, the Industrial Court and the High Court erred in basing an order of reinstatement solely on an adverse inference drawn erroneously .."

In the case of Manager, RBI, Bangalore vs. S Mani (2005) SCC Page 100, the 3 Judges Bench of the Apex Court held that "the initial burden of proof was on the workman to show that he had completed 240 days of service."

In the case of Mohan Lal vs. Management, BEL 1981 SCC P. 225, Hon'ble Apex Court held, "Before a workman can claim retrenchment, not being in consonance of Section 25 of the ID act. he has to show that he has been in continuous service of not less than 1 year with the employer who had retrenched him from service."

Now, in view of the provision contained under Section 25 B of I D Act and Law laid down by the Hon'ble Supreme Court as discussed above, we have to examine whether the retrenchment of Workman by Respondent vide order dated 6.8.2008 was in contravention of the provision contained under section 25 F. As per provision contained in Section 25B of the I.D. Act, 1947, the workmen has to prove the fact of continuous service of 240 days in a calendar year just preceding from the date of termination i.e., 6.8.2008. As claimed by Petitioner the date of termination in the present case is 6.8.2008. The relevant date of reckoning continuous 240 days of service will be the date of termination, i.e., 6.8.2008. However, record reveals that Petitioner has not filed any document in evidence to establish the fact that he had rendered continuous service for a period of 240 days in the Respondent office in a calendar year just preceding from the date of his termination i.e., 6.8.2008, WW1 has admitted in his cross examination that the Respondent has not issued any appointment letter for delivery of the telegram. The document Ex.W17, goes to show that workman had worked for 18 days in the month of June, 2006 and worked 21 days in the month of July, 2006. Apart from these documents, Petitioner has filed Ex.W21 which contains photocopies of allotted duty chart of the Petitioner along with other workmen which pertains to the year 2006 and 2007 only. Whereas, Petitioner has not filed

any document in evidence of the year 2008 in order to establish the fact of continuous service of 240 days in a calendar year just preceding from the date of his termination, i.e., 6.8.2008. Further, perusal of document Ex.W21 goes to show that these are alleged duty charts pertains to year 2006 and 2007 and not legible. Petitioner has not filed any documents to prove that he had worked 240 days continuously in a calendar year just preceding from the date of his termination. WW1 has not disclosed the source of obtaining this bunch of documents Ex.W21 or whether these documents has been issued by the authorised authority or obtained from legal sources. However, Respondent has also challenged genuineness of documents annexed with the Ex.W21 alleging that these are forged documents as the witness MW1 states that these documents are forged documents. However, Petitioner has not rebutted or contradicted this allegation by producing any cogent evidence.

10. Thus, ongoing documentary and oral evidence on record, I am of the view that Petitioner utterly failed to establish his claim that he had worked for 240 days continuously in a calendar year just preceding from the date of his termination i.e., 6.8.2008 and hence, provision of Sec.25F of I.D. Act, 1947 which pertains to legal retrenchment, do not apply to his case. Thus, for the want of evidence, documents pertaining to attendance sheet, salary slip of the workman of the year 2008. We are unable to hold that workman has completed 240 days of continuous service in a calendar year just preceding from the date of his termination i.e., 6.8.2008.

11. Once Petitioner failed to establish and prove his case of legal and valid retrenchment u/s.25F of I.D. Act, 1947, then the claim of the Petitioner for re-employment in the employment of Respondent u/s 25G and 25H is not tenable.

12. On the other hand, the Respondent has examined the witness MW1. Since MW1 was not produced for cross examination, therefore, his evidence can not be read. Respondent has examined MW2 and in the chief statement MW2 has stated that,

"I submit that the Respondent engaged the Petitioner for delivery of telegrams occasionally on daily basis and he was paid Rs.2/- per delivery of each telegram on 3.12.2001. I submit that the Petitioner was neither recruited nor appointed as telegram messenger in the Respondent organization and there is no privity of contract between the Petitioner and Respondent and there is no employee employer relationship between the Petitioner and Respondent.

I submit that contentions of the Petitioner that he joined Central Telegraph Office as telegraphic messenger on 9.1.1999 and worked continuously and discharged his duties as Telegraphic messenger with utmost satisfaction of his superiors is absolutely false as mentioned above. The Respondent engaged the Petitioner for delivery of telegrams occasionally whenever there is a work. Therefore, the question of this Respondent terminating his services from 6.8.2008 does not arise. I submit that the Petitioner himself stopped coming to deliver the telegrams without any intimation to this Respondent."

Although MW2 was cross examined by the Respondent but nothing has been elicited in his cross examination to discredit the testimony of this witness. However, the version of MW2 finds support from the oral testimony of Petitioner witness.

Thus, this Point No.I is answered against the Petitioner.

13. Point No. II:- As per record, admittedly, Petitioner was not issued any appointment letter for employment by Respondent and Respondent used to take the work from him as and when required. Thus, it is established that Petitioner had worked as daily wage workman in Respondent organization. Respondent submitted that the Petitioner was engaged for delivery of telegram, on piece rate wages and no question of terminating the services of the Petitioner from 6.8.2008 arise. Further, it is submitted that the Petitioner himself stopped delivering telegrams without intimating Respondent. Respondent submits that the Petitioner was never informed that his services will be regularised in future, since the Respondent never recruited or appointed him as a Telegraph Messenger and he was engaged only for delivering the telegram on piece rate basis. Therefore, there was no employer and employee relationship between the Petitioner and the Respondent. It is admitted fact that Petitioner was engaged for delivery of telegrams at piece rate @Rs.2/- per each delivery of the telegram and the Petitioner was never recruited nor appointed by Respondent in employment under recruitment regulation. Respondent has not issued any appointment letter to the Petitioner. The Respondent management being instrumentality of the Government, bound by rules and regulations for recruitment of employees for the organization.

Hon'ble Supreme Court in its recent decision has laid down principles and guidelines for regularization of casual workman, In the case of **ONGC Vs. Krishan Gopal 2020(3) Scale 272**, **Hon'ble Supreme Court of India have laid down the principle regarding regularization of the casual workman and have held:-**

"23 The following propositions would emerge upon analyzing the above decisions:

(i) Wide as they are, the powers of the Labour Court and the Industrial Court cannot extend to a direction to order regularisation, where such a direction would in the context of public employment offend the provisions contained in Article 14 of the Constitution;

(ii) *The statutory power of the Labour Court or Industrial Court to grant relief to workmen including the status of permanency continues to exist in circumstances where the employer has indulged in an unfair labour practice by not filling up permanent posts even though such posts are available and by continuing to employ workmen as temporary or daily wage employees despite their performing the same work as regular workmen on lower wages;*

(iii) *The power to create permanent or sanctioned posts lies outside the judicial domain and where no posts are available, a direction to grant regularisation would be impermissible merely on the basis of the number of years of service;*

(iv) *Where an employer has regularised similarly situated workmen either in a scheme or otherwise, it would be open to workmen who have been deprived of the same benefit at par with the workmen who have been regularised to make a complaint before the Labour or Industrial Court, since the deprivation of the benefit would amount to a violation of Article 14; and*

(v) *In order to constitute an unfair labour practice under Section 2(ra) read with Item 10 of the Vth Schedule of the ID Act, the employer should be engaging workmen as badlis, temporaries or casuals, and continuing them for years, with the object of depriving them of the benefits payable to permanent workmen."*

But in the instant matter, Petitioner failed to adduce any evidence that he was appointed by Respondent by following recruitment procedure or he was working against any sanctioned post in the Respondent management. Petitioner failed to adduce any evidence on record that the Respondent was indulged in any unfair labour practice by not filling the permanent post even though such post was available and by calling to employ workman as temporary or daily wages employees despite performing the same work as regular workman on lower wages. Therefore, for the want of such plea and evidence, the claim of the Petitioner for regularization in the Respondent service is not acceptable.

Further, in **Hari Nandan Prasad v Employer I/R to Management of Food Corporation of India 20 ("FCI"), Hon'ble Supreme Court of India have held:**

"34. On a harmonious reading of the two judgments discussed in detail above, we are of the opinion that when there are posts available, in the absence of any unfair labour practice the Labour Court would not give direction for regularisation only because a worker has continued as daily- wage worker/ad hoc/temporary worker for number of years. Further, if there are no posts available, such a direction for regularization would be impermissible. In the aforesaid circumstances giving of direction to regularise such a person, only on the basis of number of years put in by such a worker as daily-wager, etc. may amount to back door entry into the service which is an anathema to Article 14 of the Constitution. Further, such a direction would not be given when the worker concerned does not meet the eligibility requirement of the post in question as per the recruitment rules. However, wherever it is found that similarly situated workmen are regularised by the employer itself under some scheme or otherwise and the workmen in question who have approached the Industrial/Labour Court are on a par with them, direction of regularisation in such cases may be legally justified, otherwise, non-regularisation of the left-over workers itself would amount to invidious discrimination qua them in such cases and would be violative of Article 14 of the Constitution. Thus, the industrial adjudicator would be achieving the equality by upholding Article 14, rather than violating this constitutional provision."

Therefore, in view of the fore gone discussion and law laid down by the Hon'ble Apex Court as discussed above, the claim of the Petitioner for regularization is not tenable.

Thus, Point No. II is decided against the Petitioner accordingly.

14. **Point No. III:** In view of the finding given at Points No. I & II, the Petitioner is not entitled to any relief claimed and his petition is found to be baseless, devoid of merit and hence, liable to be dismissed.

Therefore, Point No. III is decided accordingly.

AWARD

The action of the management of BSNL, Guntur in terminating the services of workman Shri S. Mohan Sarath Babu w.e.f. 6.8.2008 is held legal and justified. The workman is not entitled to any relief as prayed for. Petition is dismissed. Reference is answered accordingly.

Award is passed accordingly. Transmit.

Dictated to Smt. P. Phani Gowri, Personal Assistant, transcribed by her, corrected and signed by me on this the 4th day of February, 2025.

IRFAN QAMAR, Presiding Officer

Appendix of evidence

Witnesses examined for the
Petitioner

WW1: Sri S. Mohan Sarath Babu

Witnesses examined for the

Respondent

MW1: Sri P. Rami Reddy

MW2: Sri Kota N.V. Prasanna Kumar

Documents marked for the Petitioner

Ex.W1: Photostat copy of authorization lr by Respondent dt. 17.6.2008

Ex.W2: Photostat copy of minutes of discussion dt. 18.6.2008

- Ex.W3: Photostat copy of representation dt. 16.7.2008
- Ex.W4: Photostat copy of representation dt. 2.9.2008
- Ex.W5: Photostat copy of representation dt. 2.9.2008
- Ex.W6: Photostat copy of Notice from ALC
- Ex.W7: Photostat copy of representation of Petitioner to ACL
- Ex.W8: Photostat copy of notices from ACL
- Ex.W9: Photostat copy of minutes of meeting dt. 16.12.2008
- Ex.W10: Photostat copy notices from ACL
- Ex.W11: Photostat copy of internal office order dt. 4.2.2009
- Ex.W12: Photostat copy of minutes of discussion before ACLC(C)
- Ex.W13: Photostat copy of failure report dt. 12.2.2009
- Ex.W14: Photostat copy of affidavit by Petitioner dt. 5.6.2009
- Ex.W15: Photostat copy of inf. With regard to delivery of telegrams
- Ex.W16: Photostat copy of inf. With regard to delivery of telegrams
- Ex.W17: Photostat copy of cooly charges for delivery of telegrams (bunch)
- Ex.W18: Photostat copy of Union resolution
- Ex.W19: Photostat copy of strike notice
- Ex.W20: Photostat copy of demands of union
- Ex.W21: Photostat copy of bunch of papers (1 to 65) of duty charts of work chart, details of messengers etc..

Documents marked for the Respondent

NIL

नई दिल्ली, 12 फरवरी, 2025

का.आ. 193.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार महाप्रबंधक, बीएसएनएल, दूरसंचार जिला, गुंटूर, के प्रबंधन के संबद्ध नियोजकों और श्री के.एल.वी. गोपाल कृष्ण मूर्ति, कामगार, के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण- सह-श्रम न्यायालय- हैदराबाद पंचाट (संदर्भ संख्या 24/2009) को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 12.02.2025 को प्राप्त हुआ था।

[सं. एल – 40012/32/2009-आईआर (डीयू)]

दिलीप कुमार, अवर सचिव

New Delhi, the 12th February, 2025

S.O. 193.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. ID. No. 24/2009) of the **Central Government Industrial Tribunal cum Labour Court— Hyderabad** as shown in the Annexure, in the Industrial dispute between the employers in relation to **The General Manager, BSNL, Telecom District, Guntur, and Shri K. L.V. Gopala Krishna Murthy, Worker**, which was received along with soft copy of the award by the Central Government on 12.02.2025.

[No. L-40012/32/2009-IR (DU)]

DILIP KUMAR, Under Secy.

ANNEXURE**IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT AT
HYDERABAD**Present: **Sri IRFAN QAMAR**

Presiding Officer

Dated the 4th day of February, 2025

INDUSTRIAL DISPUTE No. 24/2009

Between:

Sri K.L.V. Gopala Krishna Murthy,

S/o K.K.L.V. Narasimha Rao,

R/o D.No.26-28-34, 1st Lane, A.T.Agraharam,

Guntur –522004.

..... Petitioner

AND

The General Manager,

BSNL, Telecom District,

Guntur.

.... Respondent

Appearances:

For the Petitioner : M/s. G. Vidyasagar, K. Udayasree & P. Sudheer Rao, Advocates

For the Respondent: Sri S. Prabhakar Reddy, Advocate

AWARD

The Government of India, Ministry of Labour by its order No. L-40012/32/2009-IR(DU) dated 21.5.2009 referred the following dispute under section 10(1)(d) of the I.D. Act, 1947 for adjudication to this Tribunal between the management of BSNL and their workman. The reference is,

SCHEDULE

“Whether the action of the management of BSNL, Guntur in terminating the services of their workman Shri K.L.V. Gopala Krishna Murthy w.e.f. 6.8.2008 is legal and justified? If not, what relief the workman is entitled to?”

The reference is numbered in this Tribunal as I.D. No. 24/2009 and notices were issued to the parties concerned.

2. The averments made in the claim statement are as follows:

It is submitted that the Petitioner joined the Central Telegraph Office as Telegraphic Messenger on 9.2.2004. He worked continuously and discharged his duties as Telegraphic Messenger with utmost satisfaction of his superiors. It is submitted that there were about 8 Telegraphic Messengers working at Guntur circle and they used to work for more than 10 hours in different shifts as per the allotment of shifts by the Respondent Management. The Respondent used to pay Rs.20/- per day for the line works and Rs.1/- for each telegram. Now, the workmen are being paid Rs.40/- per day and Rs.2/- per each Telegram for delivering telegraphic messages. The Petitioner has to take his own cycle and deliver the same nook and corner villages. Though, the amount paid to the workmen is meager, they are discharging duties under the fond hope that their services would be regularized and that they would be paid regular scale of pay. Since workman worked considerable length of time, they made representations to the Respondent requesting for regularization of the services and also for regular scale of pay. On the ground that the workmen made representation for regularization and other benefits, they were informed orally that they need not attend for duties w.e.f. 6.8.2008. Immediately, workman approached the authority requesting to continue the services of the workmen as Telegraphic Messenger. However, the Respondent has not taken him into service. Therefore, the services were terminated orally with effect from 06/08/2008 which is wholly illegal arbitrary and unjust. It is submitted that as there was no other alternative, the BSNL contract casual employees and labour Union, approached the Assistant Commissioner of Labour (Central) Vijayawada, later the dispute was referred to this Tribunal hence, this ID. It is submitted that Petitioner worked in the Respondent with the meager salary under the fond hope that his services would be regularized in future and he will get benefits to which he is entitled to from the date of his appointment. But, till date, the Respondent has not regularized the services of the Petitioner. When Petitioner along with others formed

Union and made representation with regard to grievances of the workman, the Respondent started victimizing against the Petitioner and other workmen and ultimately their services were terminated w.e.f. 6.8.2008 without assigning any reasons. It is submitted that after disengaging the services of the workman, the Respondent has engaged other workmen viz., Sri K. Nagabhushanam, Sri Subba Rao, and Sri Goverdhan as Telegraphic Messengers, which is wholly illegal, arbitrary and contrary to the provisions of the Industrial Dispute Act, 1947. Further the Respondent have called for tenders for delivery of "C" Telegrammes work and work order has been issued to M/s. Rana Man Power & Placement Services Private Limited, Guntur, to that effect Petitioner herein filing payment bills vide Bill Dt. 11/03/2010 and 11/04/2010. It is submitted that the workman has worked for more than 4 to 5 years of continuously without any break, and the workman has completed more than 240 days in a calendar year. Hence, the workman is entitled to notice, notice pay before termination from the employment. However, the Respondent has not issued any notice nor any compensation in lieu of notice as per Section 25 of Industrial Disputes Act, 1947. Hence, the Respondent has violated the Section 25 of Industrial Disputes Act, therefore, the termination is illegal and the workman is entitled to reinstatement with all consequential benefits. It is further submitted that the Hon'ble Supreme Court in catena of decisions held that the temporary employee cannot be replaced by another temporary employee. In the given case, all the workmen have been disengaged by engaging fresh workmen as Telegraphic Messenger, which is nothing but violation of Section 25 (g) and (h) of Industrial Disputes Act. It is submitted that as per 25 (G) and (H) seniority list of employees has to be prepared and no such seniority list is prepared. It is submitted that though the workman continuously worked more than 240 days in a calendar year, the Respondent used to pay the wages for five days in factious names in order to avoid regularization and other benefits, to which the workman is entitled to. It is submitted that the workman did not secure any employment in any other organization on the ground that his services would be absorbed in the Respondent organization. By virtue of oral termination, the workman was deprived of livelihood. It is therefore prayed to declare the action on part of the Respondent in terminating the services of the Petitioner orally w.e.f. 6.8.2008 is illegal, arbitrary and unjust and consequently directing the Respondent to reinstate the Petitioner into service, with continuity of service, full back wages and other attendant benefits.

3. **Respondent filed counter denying the averments of the Petitioner as under:-**

It is further submitted that the BSNL Contract Casual Employees and Labour Union is not having any locus standi to espouse the cause of Petitioner herein. It is submitted that the Respondent engaged the Petitioner for delivery of telegrams occasionally on coolie basis and he was paid Rs.2/- per delivery of each telegram vide orders of the General Manager, Telecom No. A31/ACTTS/MISC2001-02 dated 03.12.2001. The Petitioner was neither recruited nor appointed as Telegram Messenger in the Respondent organization. There is no privity of contract between the Petitioner and Respondent. There is no employee employer relationship between the Petitioner and Respondent. Therefore the Petitioner can not avail the provisions of Industrial Disputes Act, 1947. It is further submitted that, the Respondent did not appoint the Petitioner and there is no privity of contract and therefore the question of removing his services by the Respondent does not arise. It is further submitted that the Hon'ble Apex Court in the case of Secretary, State of Karnataka Vs Uma Devi (3) reported in 2006 (4) SCC 1 was pleased to held that absorption, regularization or permanent continuance of temporary, contractual, casual, daily wage or adhoc employee appointed/ recruited dehorn the constitutional scheme or public employment on issuance of directions by court and issuance of such directions amount to creating another mode of public employment which is not permissible. In the present case the Respondent engaged the Petitioner only for delivery of telegrams occasionally on coolie basis and he was paid Rs.2/- for delivery of each telegram and therefore the Petitioner is not having any right to seek employment with the Respondent. Moreover the Petitioner without intimating to the Respondent stopped coming to deliver the telegrams. Therefore he can not claim that the Respondent engaged him and terminated his services. Viewed from any angle the claim of the Petitioner is frivolous and therefore the Petitioner is not entitled for any relief. The contentions of the Petitioner that he joined Central Telegraph Office as Telegraphic Messenger on 9.2.2004, worked continuously, discharged his duties as Telegraphic Messenger with utmost satisfaction of his superiors etc., false, baseless and not tenable and the Petitioner may be put to strict proof of the same. It is submitted that the Respondent engaged the Petitioner for delivery of telegrams occasionally and in view of the same the allegations mentioned by the Petitioner are false and untenable. Further, it is submitted that the Petitioner and other personnel engaged by the Respondent for delivery of telegrams occasionally on coolie basis on payment of Rs.2/- for delivery of each telegram they were neither recruited nor appointed as telegram messengers in the Respondent organization. Therefore the question of terminating his services orally w.e.f. 06.08.2008 by the Respondent does not arise. The Petitioner without intimating to the Respondent stopped coming to deliver the telegrams. The further contention of the Petitioner that the workman worked considerable length of time, they made representations to the Respondent requesting for regularization of the services and also for regular pay of scale etc., is untenable. The Petitioner engaged for delivery of telegrams occasionally on coolie basis by paying Rs.2/ per telegram is not entitled for regularization. The union is not having any locus standi to represent or espouse the cause of the Petitioner since the Petitioner is not a workman as defined under Section 2 (s) of the I.D.Act and therefore he can not be represented by the said union. It is submitted that Respondent never informed the Petitioner that his services will be regularized in future since the Respondent never recruited or appointed him as Telegram messenger and he was engaged only for delivery of telegrams on piece rate basis. Therefore when there is no employee employer relationship and Petitioner stopped delivery of messages without intimation, the question of termination of his services by the Respondent does not arise. It is submitted that a

tender was called for delivery of telegrams and work order has been issued to M/s.Rana Man Power and Placement Services Private Limited, Guntur since there is no alternative to the Respondent to do the same as the Petitioner and other similarly situated personnel who were engaged for the purpose of delivery of telegrams stopped delivery of telegrams without intimation. The other allegations with regard to violation of provisions of I.D.Act etc., are false and untenable. The question of violation of Section 25 (G) and (H) of the I.D.Act by the Respondent does not arise. The contentions of the Petitioner that the junior to him was considered for employment is denied for the reason that the Petitioner is not an employee of the Respondent. The Petitioner was engaged for delivery of telegram occasionally on coolie basis and he never continuously engaged for 240 days in a calendar year as employee of the Respondent. He was not paid either daily or monthly wages. The Respondent never informed the Petitioner that his services would be absorbed in BSNL Organization. He was never recruited, neither appointed nor was terminated and hence the question of reinstatement does not arise. In view of the above, the petition be dismissed as devoid of merits.

4. Heard arguments of Learned Counsels for both the parties as well as perused written arguments.

5. On the basis of rival contentions and pleadings of both the parties, following issues emerge for determination in the instant matter:-

I. Whether the action of Respondent Management of BSNL, Guntur in terminating the services of Petitioner Sri K.L.V. Gopala Krishna Murthy with effect from 6.8.2008 is legal and justified?

II. Whether the Petitioner is entitled for regularization?

III. Whether the Petitioner is entitled for the relief claimed?

Findings:-

6. **Point No. I:-** It is the claim of the Petitioner that he joined the service of the Central Telegraph Office as telegraphic messenger on 9.2.2004 and he worked for more than 4 to 5 years continuously without any break. Petitioner submits that he has completed more than 240 days in a calendar year hence, he is entitled to notice, notice pay before terminating from the employment. However, Respondent did not issue any notice nor paid compensation in lieu of notice under Section 25F of ID Act and Respondent has terminated Petitioner from service in violation of the provision contained under section 25 F of ID Act and termination order of Petitioner is illegal and he is entitled to reinstatement in the service with all consequential benefits. Further, Petitioner submits that Supreme Court in catena of decisions has held that temporary employee cannot be replaced by another temporary employee. In the instant matter all the workers have been disengaged by engaging fresh workmen as telegraphic messengers by the Respondent in violation of section 25G and H of I.D. Act, 1947. Thus, Petitioner claims that his termination order dated 6.8.2008 be set aside and Respondent be directed to reinstate him into service.

7. In support of plea in evidence Petitioner, has filed affidavit of WW1 wherein witness has reiterated the averments made in the claim statement, WW1 states that his service was terminated orally on 6.8.2008 by the Respondent in contravention of the provision of Section 25 F of the I.D. Act. WW1 was cross examined by the Respondent counsel and in his cross examination, WW1 states as under:-

"No appointment letter was issued to me for delivery of telegrams. It is not true to suggest that Respondent used to take work from me as and when required. It is true that as per Ex.W18, I have worked 2 days in the month of February, 2004 and 8 days in the month of March, 2004. It is not correct to say that I have not worked 240 days in any calendar year. The Witness volunteers that he has worked 360 days in a year without any holidays. I have not given any complaint to the Labour Department complaining that Respondent is taking our service in the holidays. I have not given any complaint that though I have worked under the Respondents but instead of my name, others name have been mentioned in the record. I have not made any complaint to that effect. It is not true to suggest that management has not appointed me as telegram messenger. Therefore the question of terminating me on 6/8/2008 does not arise."

From the above statement of WW1 it manifest that workman did not complete 240 days continuous service in the year 2004. Further, Petitioner was not issued any appointment letter therefore, it is established that he had worked as a daily wager in the Respondent office.

8. Further, WW1 was cross examined by the Respondent regarding documents, Ex.W26 the bunch of photo copies, to which Petitioner claims that it pertains to the allotment of duty charts and work chart, details of messengers, timings of duty hours and payment of bills pertaining to Petitioner for the period from 9.2.2004 to till date of termination i.e., 6.8.2008. WW1 in his cross examination states:-

"It is true that Ex. W26 pertains to only for the years 2006 and 2007. It is not true to suggest that Ex.W26 dates are not continuously appearing. I have obtained the Xerox copies of Ex.W26 from one Mr Anand Rao, Attendar in the year 2007. It is not true to suggest that I have prepared Ex. W26 and filed before this Court. The Ex.W26 contains the signature of Sr. Assistant and rubber stamp pertains to Sub Divisional Engineer. It is not true to suggest to that Ex.W26 does not disclose that I have worked for 240 days in the Respondent. It is not true to suggest that I have fabricated the document Ex.W26 for the purpose of this case."

It manifest from the above statement of WW1 that he has not filed any document of duty chart and timings of duty hours and payment of bill pertaining to year 2008 in which he was terminated. These photocopies pertains to the year 2006 and 2007 only. Now, we proceed to examine the evidence led by the Petitioner on record in support of his claim.

9. It is settled law that for taking a plea about retrenchment in violation of provision of Section 25 F of ID Act, the workman has to establish that he has been in continuous service for not less than one year or 240 days continuously in service in a calendar year just preceding from the date of his termination, under that employer who has retrenched him from service.

Before evaluating evidence on record in support of claim of Petitioner, it would be relevant to reproduce here the provision of Section 25 B of ID Act which defines the term continuous service of Workman, that reads as under:-

Section 25B defines the term continuous service which provides

Definition of continuous service.- For the purposes of this Chapter,--

(1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorized leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;

(2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer--

(a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than--

(i) one hundred and ninety days in the case of a workman employed below ground in a mine; and

(ii) two hundred and forty days, in any other case;

Further, Hon'ble Supreme Court in its number of decisions has elaborated the concept of continuous service in a calendar year u/s 25F of I.D. Act as required for valid retrenchment under I.D. Act, 1947 and few decision are discussed as follows:-

In the case of **Sur Enamel and Stamping works Private Limited Vs. their workmen**, referring to Section 25 B, Hon'ble Supreme Court has defined the term continuous service as under:-

"The position therefore is that during a period of employment for less than 11 calendar months these two persons worked for more than 240 days. In our opinion that would not satisfy the requirement of section 25B. Before a workman can be considered to have completed one year of continuous service in an industry it must be shown first that he was employed for a period of not less than 12 calendar months and, next that during those 12 calendar months had worked for not less than 240 days. Where, as in the present case, the workmen have not at all been employed for a period of 12 calendar months it becomes unnecessary to examine whether the actual days of work numbered 240 days or more. For, in any case, the requirements of section 25B would not be satisfied by the mere fact of the number of working days being not less than 240 days."

In **Mohan Lal Vs. Management of M/s. Bharat Electronics**, dated 21.4. 1981AIR 1981 Supreme Court 1253, the Hon'ble Supreme Court have held,

It was, however, urged that section 25F is not attracted in this case for an entirely different reason. Mr. Markendaya contended that before section 25F is invoked, the condition of eligibility for a workman to complain of invalid retrenchment must be satisfied. According to him unless the workman has put in continuous service for not less than one year his case would not be governed by section 25F. That is substantially correct because the relevant provision of section 25F provides as under:

"25F. "No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until:-

(a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;

Provided that no such notice shall be necessary if the retrenchment is under an agreement which specifies a date for the termination of service;

(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent of fifteen days' average pay (for every completed year of continuous service) or any part thereof in excess of six months; and

(c) notice in the prescribed manner is served on the appropriate Government (or such authority as may be specified by the appropriate government by notification in the Official Gazette)."

Reverting to the facts of this case, admittedly the appellant was employed and was on duty from December 8, 1973 to October 19, 1974 when his service was terminated. The relevant date will be the date of termination of service, i.e. October 19, 1974 Commencing from that date and counting backwards, admittedly he had rendered service for a period of 240 days within a period of 12 months and, indisputably, therefore, his case falls within section 25B(2) (a) and he shall be deemed to be in continuous service for a period of one year for the purpose of Chapter VA."

In Rajasthan State Ganganagar S. Mills Ltd. v. State of Rajasthan and Anr. (2004) Apex Court held:

"It was the case of the workman that he had worked for more than 240 days in the year concerned. This claim was denied by the appellant. It was for the claimant to lead evidence to show that he had worked for 240 days in the year preceding the date of his termination. He has filed an affidavit. It is statement which is in his favor and that cannot be regarded as sufficient evidence for any Court or Tribunal to come to the conclusion that in fact the claimant had worked for 240 days in a year These aspects were highlighted in Range Forest Officer v. S.T. Hadimani (2002) (3) SCC 25. No proof of receipt of salary or wages for 240 days or order or record in that regard was produced. Mere non-production of the muster roll for a particular period was not sufficient for the Labour Court held that the workman had worked for 240 days as claimed."

In Municipal Corporation, Faridabad v. Siri Niwas (2004) (8) SCC 195), held *"the burden was on the workman to show that he was working for more than 240 days in the preceding one year prior to his alleged retrenchment."* In *M.P. Electricity Board v. Hariram (2004) (8) SCC 246* the position was again reiterated in paragraph 11 as follows: *"The above burden having not been discharged and the Labour Court having held so, in our opinion, the Industrial Court and the High Court erred in basing an order of reinstatement solely on an adverse inference drawn erroneously .."*

In the case of Manager, RBI, Bangalore vs. S Mani (2005) SCC Page 100, the 3 Judges Bench of the Apex Court held that *"the initial burden of proof was on the workman to show that he had completed 240 days of service."*

In the case of Mohan Lal vs. Management, BEL 1981 SCC P. 225, Hon'ble Apex Court held, *"Before a workman can claim retrenchment, not being in consonance of Section 25 of the ID act. he has to show that he has been in continuous service of not less than 1 year with the employer who had retrenched him from service."*

Now, in view of the provision contained under Section 25 B of I D Act and Law laid down by the Hon'ble Supreme Court as discussed above, we have to examine whether the retrenchment of Workman by Respondent vide order dated 6.8.2008 was in contravention of the provision contained under section 25 F. As per provision contained in Section 25B of the I.D. Act, 1947, the workmen has to prove the fact of continuous service of 240 days in a calendar year just preceding from the date of termination i.e., 6.8.2008. As claimed by Petitioner the date of termination in the present case is 6.8.2008. The relevant date of reckoning continuous 240 days of service will be the date of termination, i.e., 6.8.2008. However, record reveals that Petitioner has not filed any document in evidence to establish the fact that he had rendered continuous service for a period of 240 days in the Respondent office in a calendar year just preceding from the date of his termination i.e., 6.8.2008, WW1 has admitted in his cross examination that the Respondent has not issued any appointment letter for delivery of the telegram. The document Ex.W17, goes to show that workman had worked for 2 days in the month of February, 2004 and worked 8 days in the month of March, 2004. Apart from these documents, Petitioner has filed Ex.W26 which contains photocopies of allotted duty chart of the Petitioner along with other workmen which pertains to the year 2006 and 2007 only. Whereas, Petitioner has not filed any document in evidence of the year 2008 in order to establish the fact of continuous service of 240 days in a calendar year just preceding from the date of his termination, i.e., 6.8.2008. Further, perusal of document Ex.W26 goes to show that these are alleged duty charts pertains to year 2006 and 2007 and not legible. Petitioner has not filed any documents to prove that he had worked 240 days continuously in a calendar year just preceding from the date of his termination. WW1 has not disclosed the source of obtaining this bunch of documents Ex.W26 or whether these documents has been issued by the authorised authority or obtained from legal sources. However, Respondent has also challenged genuineness of documents annexed with the Ex.W26 alleging that these are forged documents as the witness MW1 states that these documents are forged documents. However, Petitioner has not rebutted or contradicted this allegation by producing any cogent evidence.

10. Thus, ongoing documentary and oral evidence on record, I am of the view that Petitioner utterly failed to establish his claim that he had worked for 240 days continuously in a calendar year just preceding from the date of his termination i.e., 6.8.2008 and hence, provision of Sec.25F of I.D. Act, 1947 which pertains to legal retrenchment, do not apply to his case. Thus, for the want of evidence, documents pertaining to attendance sheet, salary slip of the workman of the year 2008. We are unable to hold that workman has completed 240 days of continuous service in a calendar year just preceding from the date of his termination i.e., 6.8.2008.

11. Once Petitioner failed to establish and prove his case of legal and valid retrenchment u/s.25F of I.D. Act, 1947, then the claim of the Petitioner for re-employment in the employment of Respondent u/s 25G and 25H is not tenable.

12. On the other hand, the Respondent has examined the witness MW1. Since MW1 was not produced for cross examination, therefore, his evidence can not be read. Respondent has examined MW2 and in the chief statement MW2 has stated that,

“ I submit that the Respondent engaged the Petitioner for delivery of telegrams occasionally on coolie basis and he was paid Rs.2/- per delivery of each telegram on 3.12.2001. I submit that the Petitioner was neither recruited nor appointed as telegram messenger in the Respondent organization and there is no privity of contract between the Petitioner and Respondent and there is no employee employer relationship between the Petitioner and Respondent.

I submit that contentions of the Petitioner that he joined Central Telegraph Office as telegraphic messenger on 9.2.2004 and worked continuously and discharged his duties as Telegraphic messenger with utmost satisfaction of his superiors is absolutely false as mentioned above. The Respondent engaged the Petitioner for delivery of telegrams occasionally whenever there is a work. Therefore, the question of this Respondent terminating his services from 6.8.2008 does not arise. I submit that the Petitioner himself stopped coming to deliver the telegrams without any intimation to this Respondent.”

Although MW2 was cross examined by the Respondent but nothing has been elicited in his cross examination to discredit the testimony of this witness. However, the version of MW2 finds support from the oral testimony of Petitioner witness.

Thus, this Point No.I is answered against the Petitioner.

13. Point No. II:- As per record, admittedly, Petitioner was not issued any appointment letter for employment by Respondent and Respondent used to take the work from him as and when required. Thus, it is established that Petitioner had worked as daily wage workman in Respondent organization. Respondent submitted that the Petitioner was engaged for delivery of telegram, on piece rate wages and no question of terminating the services of the Petitioner from 6.8.2008 arise. Further, it is submitted that the Petitioner himself stopped delivering telegrams without intimating Respondent. Respondent submits that the Petitioner was never informed that his services will be regularised in future, since the Respondent never recruited or appointed him as a Telegraph Messenger and he was engaged only for delivering the telegram on piece rate basis. Therefore, there was no employer and employee relationship between the Petitioner and the Respondent. It is admitted fact that Petitioner was engaged for delivery of telegrams at piece rate @Rs.2/- per each delivery of the telegram and the Petitioner was never recruited nor appointed by Respondent in employment under recruitment regulation. Respondent has not issued any appointment letter to the Petitioner. The Respondent management being instrumentality of the Government, bound by rules and regulations for recruitment of employees for the organization.

Hon'ble Supreme Court in its recent decision has laid down principles and guidelines for regularization of casual workman, In the case of **ONGC Vs. Krishan Gopal 2020(3) Scale 272, Hon'ble Supreme Court of India have laid down the principle regarding regularization of the casual workman and have held:-**

“23 The following propositions would emerge upon analyzing the above decisions:

(i) Wide as they are, the powers of the Labour Court and the Industrial Court cannot extend to a direction to order regularisation, where such a direction would in the context of public employment offend the provisions contained in Article 14 of the Constitution;

(ii) The statutory power of the Labour Court or Industrial Court to grant relief to workmen including the status of permanency continues to exist in circumstances where the employer has indulged in an unfair labour practice by not filling up permanent posts even though such posts are available and by continuing to employ workmen as temporary or daily wage employees despite their performing the same work as regular workmen on lower wages;

(iii) The power to create permanent or sanctioned posts lies outside the judicial domain and where no posts are available, a direction to grant regularisation would be impermissible merely on the basis of the number of years of service;

(iv) Where an employer has regularised similarly situated workmen either in a scheme or otherwise, it would be open to workmen who have been deprived of the same benefit at par with the workmen who have been regularised to make a complaint before the Labour or Industrial Court, since the deprivation of the benefit would amount to a violation of Article 14; and

(v) In order to constitute an unfair labour practice under Section 2(ra) read with Item 10 of the Vth Schedule of the ID Act, the employer should be engaging workmen as badlis, temporaries or casuals, and continuing them for years, with the object of depriving them of the benefits payable to permanent workmen.”

But in the instant matter, Petitioner failed to adduce any evidence that he was appointed by Respondent by following recruitment procedure or he was working against any sanctioned post in the Respondent management. Petitioner failed to adduce any evidence on record that the Respondent was indulged in any unfair labour practice by not filling the permanent post even though such post was available and by calling to employ workman as temporary or daily

wages employees despite performing the same work as regular workman on lower wages. Therefore, for the want of such plea and evidence, the claim of the Petitioner for regularization in the Respondent service is not acceptable.

Further, in **Hari Nandan Prasad v Employer I/R to Management of Food Corporation of India 20** ("FCI"), Hon'ble Supreme Court of India have held:

"34. On a harmonious reading of the two judgments discussed in detail above, we are of the opinion that when there are posts available, in the absence of any unfair labour practice the Labour Court would not give direction for regularisation only because a worker has continued as daily- wage worker/ad hoc/temporary worker for number of years. Further, if there are no posts available, such a direction for regularization would be impermissible. In the aforesaid circumstances giving of direction to regularise such a person, only on the basis of number of years put in by such a worker as daily-wager, etc. may amount to back door entry into the service which is an anathema to Article 14 of the Constitution. Further, such a direction would not be given when the worker concerned does not meet the eligibility requirement of the post in question as per the recruitment rules. However, wherever it is found that similarly situated workmen are regularised by the employer itself under some scheme or otherwise and the workmen in question who have approached the Industrial/Labour Court are on a par with them, direction of regularisation in such cases may be legally justified, otherwise, non-regularisation of the left-over workers itself would amount to invidious discrimination qua them in such cases and would be violative of Article 14 of the Constitution. Thus, the industrial adjudicator would be achieving the equality by upholding Article 14, rather than violating this constitutional provision."

Therefore, in view of the fore gone discussion and law laid down by the Hon'ble Apex Court as discussed above, the claim of the Petitioner for regularization is not tenable.

Thus, Point No.II is decided against the Petitioner accordingly.

14. **Point No.III:** In view of the finding given at Points No. I & II, the Petitioner is not entitled to any relief claimed and his petition is found to be baseless, devoid of merit and hence, liable to be dismissed.

Therefore, Point No.III is decided accordingly.

AWARD

The action of the management of BSNL, Guntur in terminating the services of workman Shri K.L.V. Gopala Krishna Murthy w.e.f. 6.8.2008 is held legal and justified. The workman is not entitled to any relief as prayed for. Petition is dismissed. Reference is answered accordingly.

Award is passed accordingly. Transmit.

Dictated to Smt. P. Phani Gowri, Personal Assistant, transcribed by her, corrected and signed by me on this the 4th day of February, 2025.

IRFAN QAMAR, Presiding Officer

Appendix of evidence

Witnesses examined for the
Petitioner

Witnesses examined for the
Respondent

WW1: Sri K.L.V. Gopala Krishna Murthy MW1: Sri P. Rami Reddy

MW2: Sri Kota N.V. Prasanna Kumar

Documents marked for the Petitioner

Ex.W1: Photostat copy of authorization Ir by Respondent dt.17.6.2008

Ex.W2: Photostat copy of minutes of discussion dt.18.6.2008

Ex.W3: Photostat copy of representation dt.16.7.2008

Ex.W4: Photostat copy of representation dt. 2.9.2008

Ex.W5: Photostat copy of Notice from ALC

Ex.W6: Photostat copy of representation

Ex.W7: Photostat copy of notices from ACL

Ex.W8: Photostat copy of minutes of meeting dt.16.12.2008

Ex.W9: Photostat copy of notices from ACL

Ex.W10:Photostat copy internal office order dt.4.2.2009

Ex.W11:Photostat copy of minutes of discussion before ACLC(C)

Ex.W12:Photostat copy of failure report dt.12.2.2009

Ex.W13:Photostat copy of reference made by Government

Ex.W14:Photostat copy of affidavit by Petitioner dt.5.6.2009
Ex.W15:Photostat copy of inf. With regard to delivery of telegrams
Ex.W16:Photostat copy of inf. With regard to delivery of telegrams
Ex.W17:Photostat copy of cooly charges for delivery of telegrams (bunch)
Ex.W18:Photostat copy of cooly charges for delivery of telegrams
Ex.W19:Photostat copy of cooly charges for delivery of telegrams
Ex.W20:Photostat copy of cooly charges for delivery of telegrams
Ex.W21:Photostat copy of cooly charges for delivery of telegrams
Ex.W22:Photostat copy of cooly charges for delivery of telegrams
Ex.W23:Photostat copy of Union resolution
Ex.W24:Photostat copy of strike notice
Ex.W25:Photostat copy of demands of union
Ex.W26:Photostat copy of bunch of papers (1 to 65) of duty charts of work chart, details of messengers etc..

Documents marked for the Respondent

NIL

नई दिल्ली, 12 फरवरी, 2025

का.आ. 194.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार महाप्रबंधक, बीएसएनएल, दूरसंचार जिला, गुंटूर, के प्रबंधन के संबद्ध नियोजकों और श्री के. प्रसाद, कामगार, के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण- सह-श्रम न्यायालय- हैदराबाद पंचाट (संदर्भ संख्या 25/2009) को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 12.02.2025 को प्राप्त हुआ था।

[सं. एल – 40012/35/2009-आईआर (डीयू)]

दिलीप कुमार, अवर सचिव

New Delhi, the 12th February, 2025

S.O. 194.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. ID. No. 25/2009) of the **Central Government Industrial Tribunal cum Labour Court– Hyderabad** as shown in the Annexure, in the Industrial dispute between the employers in relation to **The General Manager, BSNL, Telecom District, Guntur, and Shri K. Prasad, Worker**, which was received along with soft copy of the award by the Central Government on 12.02.2025.

[No. L-40012/35/2009-IR (DU)]

DILIP KUMAR, Under Secy.

ANNEXURE

**IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT AT
HYDERABAD**

Present: **Sri IRFAN QAMAR**

Presiding Officer

Dated the 4th day of February, 2025

INDUSTRIAL DISPUTE No. 25/2009

Between:

Sri K. Prasad,

S/o K.Pitchaiah,

R/o D.No. 8-1-106, 3rd Lane,

Butchaiah Thota,

Guntur -522001.

..... Petitioner

AND

The General Manager,

BSNL, Telecom District,

Guntur.

.... Respondent

Appearances:

For the Petitioner : M/s. G. Vidyasagar, K. Udayasree & P. Sudheer Rao, Advocates

For the Respondent: Sri S. Prabhakar Reddy, Advocate

AWARD

The Government of India, Ministry of Labour by its order No. L-40012/35/2009-IR(DU) dated 21.5.2009 referred the following dispute under section 10(1)(d) of the I.D. Act, 1947 for adjudication to this Tribunal between the management of BSNL and their workman. The reference is,

SCHEDULE

“Whether the action of the management of BSNL, Guntur in terminating the services of their workman Shri K. Prasad w.e.f. 17.7.2008 is legal and justified? If not, what relief the workman is entitled to?”

The reference is numbered in this Tribunal as I.D. No. 25/2009 and notices were issued to the parties concerned.

2. The averments made in the claim statement are as follows:

It is submitted that the Petitioner joined the Central Telegraph Office as Telegraphic Messenger on 13.8.2005. He worked continuously and discharged his duties as Telegraphic Messenger with utmost satisfaction of his superiors. It is submitted that there were about 8 Telegraphic Messengers working at Guntur circle and they used to work for more than 10 hours in different shifts as per the allotment of shifts by the Respondent Management. The Respondent used to pay Rs.20/- per day for the line works and Rs.1/- for each telegram. Now, the workmen are being paid Rs.40/- per day and Rs.2/- per each Telegram for delivering telegraphic messages. The Petitioner has to take his own cycle and deliver the same nook and corner villages. Though, the amount paid to the workmen is meager, they are discharging duties under the fond hope that their services would be regularized and that they would be paid regular scale of pay. Since workman worked considerable length of time, they made representations to the Respondent requesting for regularization of the services and also for regular scale of pay. On the ground that the workmen made representation for regularization and other benefits, they were informed orally that they need not attend for duties w.e.f. 17.7.2008. Immediately, workman approached the authority requesting to continue the services of the workmen as Telegraphic Messenger. However, the Respondent has not taken him into service. Therefore, the services were terminated orally with effect from 17.7.2008 which is wholly illegal arbitrary and unjust. It is submitted that as there was no other alternative, the BSNL contract casual employees and labour Union, approached the Assistant Commissioner of Labour (Central) Vijayawada, later the dispute was referred to this Tribunal hence, this ID. It is submitted that Petitioner worked in the Respondent with the meager salary under the fond hope that his services would be regularized in future and he will get benefits to which he is entitled to from the date of his appointment. But, till date, the Respondent has not regularized the services of the Petitioner. When Petitioner along with others formed Union and made representation with regard to grievances of the workman, the Respondent started victimizing against the Petitioner and other workmen and ultimately their services were terminated w.e.f. 17.7.2008 without assigning any reasons. It is submitted that after disengaging the services of the workman, the Respondent has engaged other workmen viz., Sri K. Nagabhushanam, Sri Subba Rao, and Sri Goverdhan as Telegraphic Messengers, which is wholly illegal, arbitrary and contrary to the provisions of the Industrial Dispute Act, 1947. Further the Respondent have called for tenders for delivery of "C" Telegrammes work and work order has been issued to M/s. Rana Man Power & Placement Services Private Limited, Guntur, to that effect Petitioner herein filing payment bills vide Bill Dt. 11/03/2010 and 11/04/2010. It is submitted that the workman has worked for more than 4 to 5 years of continuously without any break, and the workman has completed more than 240 days in a calendar year. Hence, the workman is entitled to notice, notice pay before termination from the employment. However, the Respondent has not issued any notice nor any compensation in lieu of notice as per Section 25 of Industrial Disputes Act, 1947. Hence, the Respondent has violated the Section 25 of Industrial Disputes Act, therefore, the termination is illegal and the workman is entitled to reinstatement with all consequential benefits. It is further submitted that the Hon'ble Supreme Court in catena of decisions held that the temporary employee cannot be replaced by another temporary employee. In the given case, all the workmen have been disengaged by engaging fresh workmen as Telegraphic Messenger, which is nothing but violation of Section 25 (g) and (h) of Industrial Disputes Act. It is submitted that as per 25 (G) and (H) seniority list of employees has to be prepared and no such seniority list is prepared. It is submitted that though the

workman continuously worked more than 240 days in a calendar year, the Respondent used to pay the wages for five days in fictitious names in order to avoid regularization and other benefits, to which the workman is entitled to. It is submitted that the workman did not secure any employment in any other organization on the ground that his services would be absorbed in the Respondent organization. By virtue of oral termination, the workman was deprived of livelihood. It is therefore prayed to declare the action on part of the Respondent in terminating the services of the Petitioner orally w.e.f. 17.7.2008 is illegal, arbitrary and unjust and consequently directing the Respondent to reinstate the Petitioner into service, with continuity of service, full back wages and other attendant benefits.

3. Respondent filed counter denying the averments of the Petitioner as under:-

It is further submitted that the BSNL Contract Casual Employees and Labour Union is not having any locus standi to espouse the cause of Petitioner herein. It is submitted that the Respondent engaged the Petitioner for delivery of telegrams occasionally on coolie basis and he was paid Rs.2/- per delivery of each telegram vide orders of the General Manager, Telecom No.A31/ACTTS/MISC2001-02 dated 03.12.2001. The Petitioner was neither recruited nor appointed as Telegram Messenger in the Respondent organization. There is no privity of contract between the Petitioner and Respondent. There is no employee employer relationship between the Petitioner and Respondent. Therefore the Petitioner can not avail the provisions of Industrial Disputes Act, 1947. It is further submitted that, the Respondent did not appoint the Petitioner and there is no privity of contract and therefore the question of removing his services by the Respondent does not arise. It is further submitted that the Hon'ble Apex Court in the case of Secretary, State of Karnataka Vs Uma Devi (3) reported in 2006 (4) SCC 1 was pleased to hold that absorption, regularization or permanent continuance of temporary, contractual, casual, daily wage or adhoc employee appointed/ recruited deforms the constitutional scheme or public employment on issuance of directions by court and issuance of such directions amount to creating another mode of public employment which is not permissible. In the present case the Respondent engaged the Petitioner only for delivery of telegrams occasionally on coolie basis and he was paid Rs.2/- for delivery of each telegram and therefore the Petitioner is not having any right to seek employment with the Respondent. Moreover the Petitioner without intimating to the Respondent stopped coming to deliver the telegrams. Therefore he can not claim that the Respondent engaged him and terminated his services. Viewed from any angle the claim of the Petitioner is frivolous and therefore the Petitioner is not entitled for any relief. The contentions of the Petitioner that he joined Central Telegraph Office as Telegraphic Messenger on 13.8.2005, worked continuously, discharged his duties as Telegraphic Messenger with utmost satisfaction of his superiors etc., false, baseless and not tenable and the Petitioner may be put to strict proof of the same. It is submitted that the Respondent engaged the Petitioner for delivery of telegrams occasionally and in view of the same the allegations mentioned by the Petitioner are false and untenable. Further, it is submitted that the Petitioner and other personnel engaged by the Respondent for delivery of telegrams occasionally on coolie basis on payment of Rs.2/- for delivery of each telegram they were neither recruited nor appointed as telegram messengers in the Respondent organization. Therefore the question of terminating his services orally w.e.f. 06.08.2008 by the Respondent does not arise. The Petitioner without intimating to the Respondent stopped coming to deliver the telegrams. The further contention of the Petitioner that the workman worked considerable length of time, they made representations to the Respondent requesting for regularization of the services and also for regular pay of scale etc., is untenable. The Petitioner engaged for delivery of telegrams occasionally on coolie basis by paying Rs.2/ per telegram is not entitled for regularization. The union is not having any locus standi to represent or espouse the cause of the Petitioner since the Petitioner is not a workman as defined under Section 2 (s) of the I.D.Act and therefore he can not be represented by the said union. It is submitted that Respondent never informed the Petitioner that his services will be regularized in future since the Respondent never recruited or appointed him as Telegram messenger and he was engaged only for delivery of telegrams on piece rate basis. Therefore when there is no employee employer relationship and Petitioner stopped delivery of messages without intimation, the question of termination of his services by the Respondent does not arise. It is submitted that a tender was called for delivery of telegrams and work order has been issued to M/s.Rana Man Power and Placement Services Private Limited, Guntur since there is no alternative to the Respondent to do the same as the Petitioner and other similarly situated personnel who were engaged for the purpose of delivery of telegrams stopped delivery of telegrams without intimation. The other allegations with regard to violation of provisions of I.D.Act etc., are false and untenable. The question of violation of Section 25 (G) and (H) of the I.D.Act by the Respondent does not arise. The contentions of the Petitioner that the junior to him was considered for employment is denied for the reason that the Petitioner is not an employee of the Respondent. The Petitioner was engaged for delivery of telegram occasionally on coolie basis and he never continuously engaged for 240 days in a calendar year as employee of the Respondent. He was not paid either daily or monthly wages. The Respondent never informed the Petitioner that his services would be absorbed in BSNL Organization. He was never recruited, neither appointed nor was terminated and hence the question of reinstatement does not arise. In view of the above, the petition be dismissed as devoid of merits.

4. Heard arguments of Learned Counsels for both the parties as well as perused written arguments.

5. On the basis of rival contentions and pleadings of both the parties, following issues emerge for determination in the instant matter:-

I. Whether the action of Respondent Management of BSNL, Guntur in terminating the services of Petitioner Sri K. Prasad with effect from 17.7.2008 is legal and justified?

II. Whether the Petitioner is entitled for regularization?

III. Whether the Petitioner is entitled for the relief claimed?

Findings:-

6. **Point No.I:-** It is the claim of the Petitioner that he joined the service of the Central Telegraph Office as telegraphic messenger on 13.8.2005 and he worked for more than 4 to 5 years continuously without any break. Petitioner submits that he has completed more than 240 days in a calendar year hence, he is entitled to notice, notice pay before terminating from the employment. However, Respondent did not issue any notice nor paid compensation in lieu of notice under Section 25F of ID Act and Respondent has terminated Petitioner from service in violation of the provision contained under section 25 F of ID Act and termination order of Petitioner is illegal and he is entitled to reinstatement in the service with all consequential benefits. Further, Petitioner submits that Supreme Court in catena of decisions has held that temporary employee cannot be replaced by another temporary employee. In the instant matter all the workers have been disengaged by engaging fresh workmen as telegraphic messengers by the Respondent in violation of section 25G and H of I.D. Act, 1947. Thus, Petitioner claims that his termination order dated 17.7.2008 be set aside and Respondent be directed to reinstate him into service.

7. In support of plea in evidence Petitioner, has filed affidavit of WW1 wherein witness has reiterated the averments made in the claim statement, WW1 states that his service was terminated orally on 17.7.2008 by the Respondent in contravention of the provision of Section 25 F of the I.D. Act. WW1 was cross examined by the Respondent counsel and in his cross examination, WW1 states as under:-

“No appointment letter was issued to me for delivery of telegrams. It is not true to suggest that Respondent used to take work from me as and when required. It is true that in Ex.W13 and 14 my name is not mentioned. It is not correct to say that I have not worked 240 days in any calendar year. The Witness volunteers that he has worked 360 days in a year without any holidays. I have not given any complaint to the Labour Department complaining that Respondent is taking our service in the holidays. I have not given any complaint that though I have worked under the Respondents but instead of my name, others name have been mentioned in the record. I have not made any complaint to that effect. It is not true to suggest that management has not appointed me as telegram messenger. Therefore the question of terminating me on 17.7.2008 does not arise.”

From the above statement of WW1 it manifest that workman did not complete 240 days continuous service in any year. Further, Petitioner was not issued any appointment letter therefore, it is established that he had worked as a daily wager in the Respondent office.

8. Further, WW1 was cross examined by the Respondent regarding documents, Ex.W19 the bunch of photo copies, to which Petitioner claims that it pertains to the allotment of duty charts and work chart, details of messengers, timings of duty hours and payment of bills pertaining to Petitioner for the period from 13.8.2005 to till date of termination i.e., 17.7.2008. WW1 in his cross examination states:-

“It is true that Ex. W19 pertains to only for the years 2006 and 2007. It is not true to suggest that Ex. W19 dates are not continuously appearing. I have obtained the Xerox copies of Ex. W19 from one Mr Anand Rao, Attendar in the year 2007. It is not true to suggest that I have prepared Ex. W19 and filed before this Court. The Ex. W19 contains the signature of Sr. Assistant and rubber stamp pertains to Sub Divisional Engineer. It is not true to suggest to that Ex W19 does not disclose that I have worked for 240 days in the Respondent. It is not true to suggest that I have fabricated the document Ex. W19 for the purpose of this case.”

It manifest from the above statement of WW1 that he has not filed any document of duty chart and timings of duty hours and payment of bill pertaining to year 2008 in which he was terminated. These photocopies pertains to the year 2006 and 2007 only. Now, we proceed to examine the evidence led by the Petitioner on record in support of his claim.

9. It is settled law that for taking a plea about retrenchment in violation of provision of Section 25 F of ID Act, the workman has to establish that he has been in continuous service for not less than one year or 240 days continuously in service in a calendar year just preceding from the date of his termination, under that employer who has retrenched him from service.

Before evaluating evidence on record in support of claim of Petitioner, it would be relevant to reproduce here the provision of Section 25 B of ID Act which defines the term continuous service of Workman, that reads as under:-

Section 25B defines the term continuous service which provides

Definition of continuous service.- For the purposes of this Chapter,--

(1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorized leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;

(2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer--

(a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than--

(i) one hundred and ninety days in the case of a workman employed below ground in a mine; and

(ii) two hundred and forty days, in any other case;

Further, Hon'ble Supreme Court in its number of decisions has elaborated the concept of continuous service in a calendar year u/s 25F of I.D. Act as required for valid retrenchment under I.D. Act, 1947 and few decision are discussed as follows:-

In the case of **Sur Enamel and Stamping works Private Limited Vs. their workmen**, referring to Section 25 B, Hon'ble Supreme Court has defined the term continuous service as under:-

"The position therefore is that during a period of employment for less than 11 calendar months these two persons worked for more than 240 days. In our opinion that would not satisfy the requirement of section 25B. Before a workman can be considered to have completed one year of continuous service in an industry it must be shown first that he was employed for a period of not less than 12 calendar months and, next that during those 12 calendar months had worked for not less than 240 days. Where, as in the present case, the workmen have not at all been employed for a period of 12 calendar months it becomes unnecessary to examine whether the actual days of work numbered 240 days or more. For, in any case, the requirements of section 25B would not be satisfied by the mere fact of the number of working days being not less than 240 days."

In **Mohan Lal Vs. Management of M/s. Bharat Electronics**, dated 21.4.1981 AIR 1981 Supreme Court 1253, the Hon'ble Supreme Court have held,

It was, however, urged that section 25F is not attracted in this case for an entirely different reason. Mr. Markendaya contended that before section 25F is invoked, the condition of eligibility for a workman to complain of invalid retrenchment must be satisfied. According to him unless the workman has put in continuous service for not less than one year his case would not be governed by section 25F. That is substantially correct because the relevant provision of section 25F provides as under:

"25F. "No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until:-

(a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;

Provided that no such notice shall be necessary if the retrenchment is under an agreement which specifies a date for the termination of service;

(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent of fifteen days' average pay (for every completed year of continuous service) or any part thereof in excess of six months; and

(c) notice in the prescribed manner is served on the appropriate Government (or such authority as may be specified by the appropriate government by notification in the Official Gazette)."

Reverting to the facts of this case, admittedly the appellant was employed and was on duty from December 8, 1973 to October 19, 1974 when his service was terminated. The relevant date will be the date of termination of service, i.e. October 19, 1974 Commencing from that date and counting backwards, admittedly he had rendered service for a period of 240 days within a period of 12 months and, indisputably, therefore, his case falls within section 25B(2) (a) and he shall be deemed to be in continuous service for a period of one year for the purpose of Chapter VA."

In Rajasthan State Ganganagar S. Mills Ltd. v. State of Rajasthan and Anr. (2004) Apex Court held:

"It was the case of the workman that he had worked for more than 240 days in the year concerned. This claim was denied by the appellant. It was for the claimant to lead evidence to show that he had worked for 240 days in the year preceding the date of his termination. He has filed an affidavit. It is statement which is in his favor and that cannot be regarded as sufficient evidence for any Court or Tribunal to come to the conclusion that in fact the claimant had worked for 240 days in a year These aspects were highlighted in Range Forest Officer v. S.T. Hadimani (2002 (3) SCC 25. No proof of receipt of salary or wages for 240 days or order or record in that regard was produced. Mere non-production of the muster roll for a particular period was not sufficient for the Labour Court held that the workman had worked for 240 days as claimed."

In Municipal Corporation, Faridabad v. Siri Niwas (2004 (8) SCC 195), held "the burden was on the workman to show that he was working for more than 240 days in the preceding one year prior to his alleged retrenchment." In **M.P. Electricity Board v. Hariram (2004 (8) SCC 246)** the position was again reiterated in paragraph 11 as follows:

"The above burden having not been discharged and the Labour Court having held so, in our opinion, the Industrial Court and the High Court erred in basing an order of reinstatement solely on an adverse inference drawn erroneously .."

In the case of Manager, RBI, Bangalore vs. S Mani (2005) SCC Page 100, the 3 Judges Bench of the Apex Court held that "the initial burden of proof was on the workman to show that he had completed 240 days of service."

In the case of Mohan Lal vs. Management, BEL 1981 SCC P. 225, Hon'ble Apex Court held, "Before a workman can claim retrenchment, not being in consonance of Section 25 of the ID act. he has to show that he has been in continuous service of not less than 1 year with the employer who had retrenched him from service."

Now, in view of the provision contained under Section 25 B of I D Act and Law laid down by the Hon'ble Supreme Court as discussed above, we have to examine whether the retrenchment of Workman by Respondent vide order dated 17.7.2008 was in contravention of the provision contained under section 25 F. As per provision contained in Section 25B of the I.D. Act, 1947, the workmen has to prove the fact of continuous service of 240 days in a calendar year just preceding from the date of termination i.e., 17.7.2008. As claimed by Petitioner the date of termination in the present case is 17.7.2008. The relevant date of reckoning continuous 240 days of service will be the date of termination, i.e., 17.7.2008. However, record reveals that Petitioner has not filed any document in evidence to establish the fact that he had rendered continuous service for a period of 240 days in the Respondent office in a calendar year just preceding from the date of his termination i.e., 17.7.2008, WW1 has admitted in his cross examination that the Respondent has not issued any appointment letter for delivery of the telegram. Apart from these documents, Petitioner has filed Ex.W19 which contains photocopies of allotted duty chart of the Petitioner along with other workmen which pertains to the year 2006 and 2007 only. Whereas, Petitioner has not filed any document in evidence of the year 2008 in order to establish the fact of continuous service of 240 days in a calendar year just preceding from the date of his termination, i.e., 17.7.2008. Further, perusal of document Ex. W19 goes to show that these are alleged duty charts pertains to year 2006 and 2007 and not legible. Petitioner has not filed any documents to prove that he had worked 240 days continuously in a calendar year just preceding from the date of his termination. WW1 has not disclosed the source of obtaining this bunch of documents Ex. W19 or whether these documents has been issued by the authorised authority or obtained from legal sources. However, Respondent has also challenged genuineness of documents annexed with the Ex. W19 alleging that these are forged documents as the witness MW1 states that these documents are forged documents. However, Petitioner has not rebutted or contradicted this allegation by producing any cogent evidence.

10. Thus, ongoing documentary and oral evidence on record, I am of the view that Petitioner utterly failed to establish his claim that he had worked for 240 days continuously in a calendar year just preceding from the date of his termination i.e., 17.7.2008 and hence, provision of Sec.25F of I.D. Act, 1947 which pertains to legal retrenchment, do not apply to his case. Thus, for the want of evidence, documents pertaining to attendance sheet, salary slip of the workman of the year 2008. We are unable to hold that workman has completed 240 days of continuous service in a calendar year just preceding from the date of his termination i.e., 17.7.2008.

11. Once Petitioner failed to establish and prove his case of legal and valid retrenchment u/s.25F of I.D. Act, 1947, then the claim of the Petitioner for re-employment in the employment of Respondent u/s 25G and 25H is not tenable.

12. On the other hand, the Respondent has examined the witness MW1. Since MW1 was not produced for cross examination, therefore, his evidence can not be read. Respondent has examined MW2 and in the chief statement MW2 has stated that,

"I submit that the Respondent engaged the Petitioner for delivery of telegrams occasionally on coolie basis and he was paid Rs.2/- per delivery of each telegram on 3.12.2001. I submit that the Petitioner was neither recruited nor appointed as telegram messenger in the Respondent organization and there is no privity of contract between the Petitioner and Respondent and there is no employee employer relationship between the Petitioner and Respondent."

I submit that contentions of the Petitioner that he joined Central Telegraph Office as telegraphic messenger on 13.8.2005 and worked continuously and discharged his duties as Telegraphic messenger with utmost satisfaction of his superiors is absolutely false as mentioned above. The Respondent engaged the Petitioner for delivery of telegrams occasionally whenever there is a work. Therefore, the question of this Respondent terminating his services from 17.7.2008 does not arise. I submit that the Petitioner himself stopped coming to deliver the telegrams without any intimation to this Respondent."

Although MW2 was cross examined by the Respondent but nothing has been elicited in his cross examination to discredit the testimony of this witness. However, the version of MW2 finds support from the oral testimony of Petitioner witness.

Thus, this Point No.I is answered against the Petitioner.

13. Point No. II:- As per record, admittedly, Petitioner was not issued any appointment letter for employment by Respondent and Respondent used to take the work from him as and when required. Thus, it is established that Petitioner had worked as daily wage workman in Respondent organization. Respondent submitted that the Petitioner was engaged for delivery of telegram, on piece rate wages and no question of terminating the services of the Petitioner from 17.7.2008 does not arise. Further, it is submitted that the Petitioner himself stopped delivering telegrams without intimating Respondent. Respondent submits that the Petitioner was never informed that his services will be regularised in future, since the Respondent never recruited or appointed him as a Telegraph Messenger and he was engaged only for delivering the telegram on piece rate basis. Therefore, there was no employer and employee relationship between the Petitioner and the Respondent. It is admitted fact that Petitioner was engaged for delivery of telegrams at piece rate @Rs.2/-per each delivery of the telegram and the Petitioner was never recruited nor appointed by Respondent in employment under recruitment regulation. Respondent has not issued any appointment letter to the Petitioner. The Respondent management being instrumentality of the Government, bound by rules and regulations for recruitment of employees for the organization.

Hon'ble Supreme Court in its recent decision has laid down principles and guidelines for regularization of casual workman, In the case of **ONGC Vs. Krishan Gopal 2020(3) Scale 272, Hon'ble Supreme Court of India have laid down the principle regarding regularization of the casual workman and have held:-**

“23 The following propositions would emerge upon analyzing the above decisions:

- (i) Wide as they are, the powers of the Labour Court and the Industrial Court cannot extend to a direction to order regularisation, where such a direction would in the context of public employment offend the provisions contained in Article 14 of the Constitution;*
- (ii) The statutory power of the Labour Court or Industrial Court to grant relief to workmen including the status of permanency continues to exist in circumstances where the employer has indulged in an unfair labour practice by not filling up permanent posts even though such posts are available and by continuing to employ workmen as temporary or daily wage employees despite their performing the same work as regular workmen on lower wages;*
- (iii) The power to create permanent or sanctioned posts lies outside the judicial domain and where no posts are available, a direction to grant regularisation would be impermissible merely on the basis of the number of years of service;*
- (iv) Where an employer has regularised similarly situated workmen either in a scheme or otherwise, it would be open to workmen who have been deprived of the same benefit at par with the workmen who have been regularised to make a complaint before the Labour or Industrial Court, since the deprivation of the benefit would amount to a violation of Article 14; and*
- (v) In order to constitute an unfair labour practice under Section 2(ra) read with Item 10 of the Vth Schedule of the ID Act, the employer should be engaging workmen as badlis, temporaries or casuals, and continuing them for years, with the object of depriving them of the benefits payable to permanent workmen.”*

But in the instant matter, Petitioner failed to adduce any evidence that he was appointed by Respondent by following recruitment procedure or he was working against any sanctioned post in the Respondent management. Petitioner failed to adduce any evidence on record that the Respondent was indulged in any unfair labour practice by not filling the permanent post even though such post was available and by calling to employ workman as temporary or daily wages employees despite performing the same work as regular workman on lower wages. Therefore, for the want of such plea and evidence, the claim of the Petitioner for regularization in the Respondent service is not acceptable.

Further, in **Hari Nandan Prasad v Employer I/R to Management of Food Corporation of India²⁰ (“FCI”), Hon'ble Supreme Court of India have held:**

“34. On a harmonious reading of the two judgments discussed in detail above, we are of the opinion that when there are posts available, in the absence of any unfair labour practice the Labour Court would not give direction for regularisation only because a worker has continued as daily- wage worker/ad hoc/temporary worker for number of years. Further, if there are no posts available, such a direction for regularization would be impermissible. In the aforesaid circumstances giving of direction to regularise such a person, only on the basis of number of years put in by such a worker as daily-wager, etc. may amount to back door entry into the service which is an anathema to Article 14 of the Constitution. Further, such a direction would not be given when the worker concerned does not meet the eligibility requirement of the post in question as per the recruitment rules. However, wherever it is found that similarly situated workmen are regularised by the employer itself under some scheme or otherwise and the workmen in question who have approached the Industrial/Labour Court are on a par with them, direction of regularisation in such cases may be legally justified, otherwise, non-regularisation of the left-over workers itself would amount to invidious discrimination qua them in such cases and would be violative of Article 14 of the Constitution. Thus, the industrial adjudicator would be achieving the equality by upholding Article 14, rather than violating this constitutional provision.”

Therefore, in view of the fore gone discussion and law laid down by the Hon'ble Apex Court as discussed above, the claim of the Petitioner for regularization is not tenable.

Thus, Point No.II is decided against the Petitioner accordingly.

14. **Point No. III:** In view of the finding given at Points No. I & II, the Petitioner is not entitled to any relief claimed and his petition is found to be baseless, devoid of merit and hence, liable to be dismissed.

Therefore, Point No.III is decided accordingly.

AWARD

The action of the management of BSNL, Guntur in terminating the services of workman Shri K. Prasad w.e.f. 17.7.2008 is held legal and justified. The workman is not entitled to any relief as prayed for. Petition is dismissed. Reference is answered accordingly.

Award is passed accordingly. Transmit.

Dictated to Smt. P. Phani Gowri, Personal Assistant, transcribed by her, corrected and signed by me on this the 4th day of February, 2025.

IRFAN QAMAR, Presiding Officer

Appendix of evidence

Witnesses examined for the

Petitioner

WW1: Sri K. Prasad

Witnesses examined for the

Respondent

MW1: Sri P. Rami Reddy

MW2: Sri Kota N.V. Prasanna Kumar

Documents marked for the Petitioner

Ex.W1: Photostat copy of authorization lr by Respondent dt.17.6.2008

Ex.W2: Photostat copy of minutes of discussion dt.18.6.2008

Ex.W3: Photostat copy of representation dt.16.7.2008

Ex.W4: Photostat copy of representation dt. 2.9.2008

Ex.W5: Photostat copy of representation

Ex.W6: Photostat copy of Notice from ALC

Ex.W7: Photostat copy of internal office order dt.4.2.2009

Ex.W8: Photostat copy of minutes of discussion before ACLC(C)

Ex.W9: Photostat copy of reference made by Government

Ex.W10:Photostat copy affidavit by Petitioner dt.6.6.2009

Ex.W11:Photostat copy of inf. With regard to delivery of telegrams

Ex.W12:Photostat copy of inf. With regard to delivery of telegrams

Ex.W13:Photostat copy of cooly charges for delivery of telegrams

Ex.W14:Photostat copy of pay sheet

Ex.W15: Photostat copy of cooly charges for delivery of telegrams

Ex.W16:Photostat copy of Union resolution

Ex.W17:Photostat copy of strike notice

Ex.W18:Photostat copy of demands of union

Ex.W19:Photostat copy of bunch of papers (1 to 65) of duty charts of work chart, details of messengers etc..

Documents marked for the Respondent

NIL

नई दिल्ली, 12 फरवरी, 2025

का.आ. 195.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार समूह महाप्रबंधक, एनटीपीसी लिमिटेड सिम्हाद्री सुपर थर्मल पावर प्रोजेक्ट एनटीपीसी सिम्हाद्री, परवाड़ा, विशाखापत्तनम, (आ.प्र.), के प्रबंधतंत्र के संबद्ध नियोजकों अध्यक्ष, एनटीपीसी मजदूर यूनियन सिम्हाद्री (INTUC), एनटीपीसी सिम्हाद्री, दीपांजलिनगर, परवाड़ा, विशाखाटनम, आंध्र प्रदेश, के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार

औद्योगिक अधिकरण- सह-श्रम न्यायालय- हैदराबाद पंचाट (संदर्भ संख्या 03/2021) को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 12.03.2025 को प्राप्त हुआ था।

[सं. एल – 40011/13/2020-आईआर (डीयू)]

दिलीप कुमार, अवर सचिव

New Delhi, the 12th February, 2025

S.O. 195.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. ID. No. 03/2021) of the **Central Government Industrial Tribunal cum Labour Court— Hyderabad** as shown in the Annexure, in the Industrial dispute between the employers in relation to **The Group General Manager, NTPC Ltd. Simhadri Super Thermal Power Project NTPC Simhadri, Parawada, Vishakapatnam, (A.P.), and The President, NTPC Mazdoor Union Simhadri (INTUC), NTPC Simhadri, Deepanjalinagar, Parawada, Vishakapatnam, Andhra Pradesh**, which was received along with soft copy of the award by the Central Government on 12.03.2025.

[No. L-40011/13/2020-IR (DU)]

DILIP KUMAR, Under Secy.

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT AT HYDERABAD

Present: - **Sri IRFAN QAMAR**

Presiding Officer

Dated the 23rd day of January, 2025

INDUSTRIAL DISPUTE No. 3/2021

Between:

The Hon'ble working President,
NTPC Mazdoor Union Simhadri (INTUC),
NTPC Simhadri, Deepanjalinagar,
Parawada, Vishakapatnam,
Andra Pradesh-531020.

.....

Petitioner

AND

The Group General Managar,
NTPC Ltd. Simhadri Super
Thermal Power Project,
NTPC Simhadri, Parawada,
Vishakapatnam-531020.

...Respondents

Appearances:

For the Petitioner : None

For the Respondent: None

AWARD

1. The Government of India, Ministry of Labour by its order No.L-42011/13/2020 (IR(DU)) dated 21.07.2020 referred the following dispute under section 10(1)(d) of the I.D. Act, 1947 for adjudication to this Tribunal between the management of M/s NTPC Ltd., and their workmen. The reference is,

SCHEDULE

“Whether the action of the management of NTPC Ltd, Visakhapatnam is not granting promotion to Sri Shaik Saleem, Technician Grade-I(W7) to W8 Grade is proper, legal and/or justified? If not, what relief the workman is entitled to? What other directions, if any, are necessary in the matter?”

The reference is numbered in this Tribunal as I.D. No 3/2021 and notices were issued to the parties concerned.

2. Petitioner absent on the date fixed for filing of claim statement and documents. Record reveals that notice served on Petitioner but none present on behalf of Petitioner. Therefore, in absence of Petitioner and non-filing of claim statement by the Petitioner, the case is 'No Claim' award is passed.

Award is passed accordingly. Transmit.

Typed to my dictation by Shri Vinay Panghal, LDC corrected and signed by me on this the 23rd day of January, 2025.

IRFAN QAMAR, Presiding Officer

Appendix of evidence

Witnesses examined for the

Witnesses examined for the

Petitioner

Respondent

NIL

NIL

Documents marked for the Petitioner

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 12 फरवरी, 2025

का.आ. 196.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार LVV cld vKID bnkj के प्रबंधन, संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय जबलपुर के पंचाट (10/2014) प्रकाशित करती है।

[सं. एल 12011/29/2007-आईआर (बी-1)]

सलोनी, उप निदेशक

New Delhi, the 12th February, 2025

S.O. 196.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref.10/2014) of the *Cent.Govt.Indus.Tribunal-cum-Labour Court Jabalpur* as shown in the Annexure, in the industrial dispute between the management of State Bank of Indore their workmen.

[No. L-12011/29/2007-IR ((B-I)]

SALONI, Dy. Director

ANNEXURE

THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, JABALPUR

NO. CGIT/LC/R/10/2014

Present: P.K. Srivastava

H.J.S..(Retd)

The Asstt. General Secretary,

Akhil Bhartiya Adhinasth Bank

Karamchari Sangh,

P.B. No. 62, Roxy Pul, Kampoo Road,

Lashkar, Gwalior (M.P.)

Workman

Vs

**The General Manager (O),
State Bank of Indore
Head Office, 5, Y.N. Road**

Management

(JUDGMENT)

(Passed on this 08th day of November-2024)

As per letter dated 04/02/2014 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section-10 of Industrial Disputes Act, 1947 (in short the 'Act') as per Notification No. L-12011/29/2007-IR (B-I) dt. 04/02/2014. The dispute under reference relates to:

“Whether, the allegation of union that the management has adopted unfair labour practice and not promoted Shri H.P. Khajuria although his juniors have been promoted is justified? If so, to what relief the workman is entitled for?”

According to the Workmen Union, the workman H.P. Khajuria, who happens to be the General Secretary of the Union, had consented to appear in the examination to be conducted by the Management Bank for promotion in Clerical Cadre from Sub-ordinate Staff on October 31, 1993. He was informed about the day of the examination only 5 days before hence; he sent a communication to the Branch Manager stating that he was not in a position to appear in the examination because he has been informed about the date of examination only 5 days before. The management bank replied the workman vide its letter dated October 28, 1993 informing him that if he does not wish to appear in the examination, he may give it in writing failing which it will be taken that he had consented to appear in this examination. According to the Workmen Union, the workman again send a letter on October 29, 1993 to the management that in case he accords his consent for not appearing in the said examination, he would be deprived of seniority and requested that the examination date itself be postponed. The examination was conducted on October 31, 1993 and the workman did not appear. Later on, as it is the case of the Workmen Union, another written examination for promotion to Clerical Cadre was conducted by management Bank on January 5, 1994 but, he was not informed of this examination date though this examination was for those who did not appear in the examination conducted by management bank on October 31, 1993. According to Workmen Union, the management Union bank informed the workman vide its letter dated March 25, 1994 that since he did not appear for the examination conducted on October 31, 1993 though he had consented for it hence, he could be held entitled to appear in the second examination conducted on January 5, 1994. According to the Workmen Union this is unfair labour practice adopted by the Management Bank in unjustly and wrongfully denying him opportunity to appear in the examination for promotion and has requested that holding the action of the Management Bank unjust and against law, the workman be held entitled to be promoted in Clerical Cadre from January 29, 1994 and be held entitled to all back wages and consequential benefits.

The case of management, has taken by them in their written statement of defense is mainly that the State Bank of Indore has emerged into State Bank of India by way of a notification dated July 28, 2010 issued by the Central Government effective from August 27, 2010. According to the promoted employees and officers of the Transfer bank to Transferee Bank, the benefits filed only to the permanent staff on the date of notification.

It is further the case of Management Bank that firstly there is delay of 20 years in raising the dispute and secondly according to the rules enforced in the Transferee Bank, the sub-ordinate staff was given three attempts to appear in examination for promotion to Clerical Cadre. Each such employees was required to give his consent for participating in the examination. The workman also accorded his consent to appear in the examination for promotion conducted on October 31, 1993 which was his third and last chance, he did not accorded his consent with respect to non-participation in the examination in spite of communication by Bank later he insisted on postponement of the examination, hence doing that he did not avail the opportunity by way of appearing in the examination itself held on October 31, 1993 and absenting himself from this examination, he had exhausted his all three attempts. That is why he was not given opportunity to appear in the subsequent examination of January, 1994 hence according to the Management Bank, had he cannot be stated it adopted unfair labour practice and its action in not permitting the workman to appear in the subsequent examination in January 1994 is just and legal. The management has accordingly requested that the reference to be answered against the workman.

The workman side has filed its regional award in its retreated its case taking in its statement of claim.

In evidence, the workman side has filed and proved documents Exhibit W-1 Letter of the Workman dated October 28, 1993, Exhibit W-2 Letter of Management dated October 28, 1993, Exhibit W-3 Letter of Workman dated October 29, 1993 in response to letter of Management dated October 28, 1993, Exhibit W-4 letter of Management dated March 25, 1994 with reference to representative of Workman dated January 31, 1994, Exhibit W-5

communication of Branch Manager to Regional Manager on January 27, 1994 circular of Bank dated January 5, 1994 with respect to examination for promotion schedule to be held on January 30, 1994, Exhibit-7 letter of Management dated November 16, 1994 requiring his consent for a other examination for promotion to be held on October 28, 1994, exhibit W-8 reply of workman dated November 24, 1994 requiring the Management Bank to explain as to why he was not permitted to appear in the proposal examination of January 1994, and also stating that he would be in a position to accord as consented to appear in the proposed examination to be held on October 28, 1994. The workman has filed and provoked various communications also, to be referred to as and well required.

The workman has also filed his affidavit as his examination in chief he has been cross examined by management on his affidavit.

Management has filed affidavit of his witness as his examination in chief, he has been cross examined by workman union.

I have heard the argument of learned counsel of workman Shri K.B. Singh and Shri Praveen Yadav for management. I have gone through the record as well.

The reference is the issue for determination.

It is not disputed that an opportunity relevant rules regarding promotion of sub-ordinate staff to clerical cadre, a written examination was to be conducted in which every illegible employee in the sub-ordinate cadre was required to be appeared and promotion to clerical cadre was subjected to clearing of this examination. As further provided in the said rules only three attempts were permissible to the employees in sub-ordinate cadre for promotion. This also not disputed and is establish from evidence on record that the examination to be conducted in October 1993 was the third and last attempt of the workman for which he was consented. This is also not disputed that, in spite of being communicated by management that have he did not wish to appear in the examination scheduled in October 1993, he had an option to give a consent in writing that he did not wish to appear in the said examination due to certain reasons. Not disputed is the fact also that the workman did not accord his consent for not appearing this examination in his letter to management dated October 29, 1993 which exhibit W-3 and insisted that the examination itself be postponed. In these circumstances the action of management in assuming that the workman had exhausted his third and last chance cannot be held as unjustified as it was provided in the rules. On this basis, the action of management in not permitting the workman in the examination for promotion conducted in January 1994 also cannot be held unjustified because the workman had already exhausted all of its attempts available as mention above.

Also it is evident on record that the workman was given another opportunity to appear in the examination for promotion to be held in October 1994.

Furthermore, since the dispute has been raised with unexplained delay of 20 years, this fact also goes against the workman union. The settled principle is delay defeats equity.

Hence, on the basis of above discussion, holding the claim of the union that the management had adopted unfair labour practice in not promoting Shri H.P. Khajuria not justified in law, the workman is held entitled to no relief. No order as to cost.

The reference stands answered accordingly.

DATE:- 08/11/2024

P. K. SRIVASTAVA, Presiding Officer

नई दिल्ली, 12 फरवरी, 2025

का.आ. 197.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार e/; jyoS के प्रबंधतंत्र, संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय जबलपुर के पंचाट (115/1999) प्रकाशित करती है।

[सं. एल – 41012/15/98-आईआर (बी-1)]

सलोनी, उप निदेशक

New Delhi, the 12th February, 2025

S.O. 197.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 115/1999) of the *Cent.Govt.Indus.Tribunal-cum-Labour Court Jabalpur* as shown in the Annexure, in the industrial dispute between the management of Central Railway their workmen.

[No. L-41012/15/98-IR (B-I)]

SALONI, Dy. Director.

ANNEXURE

THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, JABALPUR
NO. CGIT/LC/R/115/1999

Present: P.K. Srivastava

H.J.S..(Retd)

Jagannath Prasad

S/o. Gokuldas

Village – Piliyakhal, PO : Harda

District – Harda (M.P.)

Workman

Versus

The Divisional Railway Manager (P)

Central Railway, Bhopal (M.P.)-462001

Management

(JUDGMENT)

(Passed on this 25th day of October-2024)

As per letter dated 09/03/1999 by the Government of India, Ministry of Labour, New Delhi, the reference is made to this Tribunal under Section-10 of Industrial Disputes Act, 1947 as per Notification No. L-41012/15/98/R(B-I) dt. 09/03/1999. The dispute under reference relates to:

“whether the action of the management of General Manager, Central Railway, Mumbai V.T. in terminating the services of Shri Jagannath Prasad S/o. Gokuldas, w.e.f. 19/2/98 is justified ? If not, to what relief the workman is entitled for ?”

After registering a case on the basis of the reference, notices were sent to the parties and were served. Parties appeared and file their respective Statement of Claims and Defense.

1. The Government of India, Ministry of Labour vide its Notification No.- L-41012/15/98/IR(B-I) dated 9-3-99 has referred the following dispute for adjudication by this Tribunal :-

“Whether the action of the management of General Manager, Central Railway, Mumbai v.t. in terminating the services of Shri Jagannath Prasad S/o. Gokuldas w.e.f. 19-2-98 is justified ? If not, to what relief the workman is entitled for ?”

2. The case of the workman Shri Jagannath Prasad in short is that he was appointed on the post of Khalasi on regular basis on 3-8-83 and worked continuously till 18-9-83 for 45 days in RCF, Thal, Central Railway. Thereafter, he was again engaged at Harda from 19-1-84 to 18-3-84 for 59 days. Then at Burhanpur he was engaged from 24-8-84 to 18-9-94 for 26 days. Again he was engaged at Harda from 25-6-85 to 18-9-86 for 88 days. Lastly he was engaged again at Harda from 3-6-88 to 12-9-89 for 211 days. He was issued Services Card bearing No. 330152. It is stated that he had worked more than 240 days and he was deemed to be permanent employee as such he was transferred from one place to another. It is stated that while he was working under Inspector, Central Railway, Harda he became ill and he was treated in the Railway Hospital and after becoming fit, he submitted fitness certificate but he was not taken in employment. It is submitted that the reference be answered in his favour.
3. The management appeared and filed Written Statement in the case. The case of the management, interalia is that the workman has projected his case, as if he is a regular employee of the Railway and the medical rules are applicable. Infact, the workman was engaged on daily wages. He had worked as daily wages employee of the period as it is stated in the statement of claim. He had not worked 240 days in any year and as such the provision of Industrial Dispute Act 1947 (in short the Act, 1947) is not applicable. He was absent unauthorisedly and had given no reply. Therefore his name was struck off from the roll. It is stated that the grant of monthly rated casual labour (in short MRCL) status does not mean that he had been regularized. It is submitted that the workman is not entitled to any relief.
4. On the basis of the pleading and the reference order the following issues are framed for adjudication by my learned Predecessor :-
 - I. Whether the action of the management in terminating the services of Shri Jagannath Prasad w.e.f. 19-2-98 is justified ?
 - II. To what relief the workman is entitled ?

On the basis of evidence on record, the Issue No.-1 was decided against the workman with a finding that from the evidence on record, the case of the workman that, he worked for 240 days in any calendar year was not proved and also that there was no pleading and evidence from either of the parties that the workman had worked from 1995 to Feb. 19th 1998, which showed that the workman had not worked in twelve calendar months preceding the date of his termination. The workman was also held not entitled to any relief.

The workman preferred a W.P. No.-11436/2014 before Hon'ble High Court M.P. at Jabalpur, which was heard and decided by a Single Bench vide order dated 04.07.2024. It was observed by Hon'ble High Court that, it was crystal clear from perusal of para 6 of the Award that, this Tribunal has considered the case from the angle that, it is deciding the reference of termination of service/retrenchment of services of the petitioner on 19.02.1998, whereas the reference was regarding termination of services on 19.02.1990. Setting aside the Award passed by my learned Predecessor, it was directed that the reference be decided afresh by this Tribunal within three months from the date of appearance of parties before this Tribunal.

The case was restored in compliance of the aforesaid order of Hon'ble High Court. No evidence was proposed by any of the parties, hence argument of learned Counsel for workman Shri N.K. Salunke was heard. Management preferred to file written arguments.

I have perused the record in the light of arguments.

On the perusal of the record, in the light of rival arguments, following issues arise for determination :-

- 1) *Whether, the workman has successfully proved his continuous engagement for 240 days in an year ?*
- 2) *Whether, the disengagement of the workman is legal ?*
- 3) *Whether, the workman is entitled to any benefit ?*

Issue No.-1 :-

The pleadings of the parties have already been detailed earlier in this Judgment. The initial burden to prove its case is on workman. He has corroborated his allegations in statement of claim in his affidavit filed as his examination in chief. He has been cross examined by management. The two witnesses examined from the side of the workman in support of his claim on this issue have corroborated his case and there is nothing in their cross examination to discredit them on this issue.

In their pleadings, management does not deny the engagement of the workman. Management only denies the claim of continuously working for 240 days in any year, specially the year preceding the date of his termination. According to management, the maximum period for which the workman worked is between 03.06.1988 to 12.02.1989, which is 211 working days.

Learned Counsel for workman has submitted that, the total number of days within this period between 03.06.1988 to 12.02.1989 is 249 days. He further submits, referring Section 25-B of the Act that the holidays will also be counted as working days for the purpose of counting 240 days of continuous engagement in a year.

Section 25-B reads as under :-

25B. Definition of continuous service.—For the purposes of this Chapter,—

(1) *a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;*

(2) *where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer—*

(a) *for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than—*

(i) *one hundred and ninety days in the case of a workman employed below ground in a mine; and*

(ii) *two hundred and forty days, in any other case;*

(b) *for a period of six months, if the workman, during a period of six calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than—*

(i) *ninety-five days, in the case of a workman employed below ground in a mine; and*

(ii) *one hundred and twenty days, in any other case.*

Explanation.—For the purposes of clause (2), the number of days on which a workman has actually worked under an employer shall include the days on which—

(i) he has been laid-off under an agreement or as permitted by standing orders made under the Industrial Employment (Standing Orders) Act, 1946 (20 of 1946), or under this Act or under any other law applicable to the industrial establishment;

(ii) he has been on leave with full wages, earned in the previous years;

(iii) he has been absent due to temporary disablement caused by accident arising out of and in the course of his employment; and

(iv) in the case of a female, she has been on maternity leave; so, however, that the total period of such maternity leave does not exceed twelve weeks.

Thus, in the light of this provision the days which were not working days i.e., holidays will also be counted for this purpose and counting holidays also within this period, the number of days in continuous engagement according to Section 25-B of the Act comes at 249 days. Hence, holding the workman has successfully proved his continuous engagement for 240 days and more proved, issue no.-1 is answered in favour of the workman.

Issue No.-2 :-

Before entering into any discussion on merit, Section 25-F & 25-G of the Act are being reproduced as follows :-

25F. Conditions precedent to retrenchment of workmen.— No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until—

(a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;

(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and

(c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette.

25G. Procedure for retrenchment.— Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman.

Case of the workman is that he was not issued any notice of retrenchment nor was he paid compensation, which he has corroborated in his evidence. It is not the case of management that he was paid any compensation or given prior notice. Hence, termination of his services is held in violation of 25-F & 25-G of the Act and issue no.-2 is answered accordingly.

Issue No.-3:-

In the light of findings recorded above the question arises as to what relief the workman is entitled ?

It has been submitted that compensation may be in the interest of justice in the case in hand because the workman was not appointed against a sanctioned vacancy following recruitment procedure. Following decisions have been cited in this respect :-

- 1) *Mahboob Deepak Vs. Nagar Panchayat Gajroula*. (2008) 1 SCC 575.
- 2) *State of Haryana Vs. Piara Singh*, (1992) LIC 2168.
- 3) *Himanshu Kumar Vidyarthi Vs. State of Bihar*, AIR 1997 SC 3657.
- 4) *Secretary, State of Karnataka Vs. Uma Devi*, (2006) 4 SCC 1.

Learned Counsel for workman has submitted that keeping the workman should be reinstated with back wages. He has referred to a Division Bench Judgment of Hon'ble High Court of M.P. passed in W.A. No.- 1431/2018 and other connected writ appeals, in which a Division Bench of Hon'ble High Court has approved the Award of this Tribunal passed in the case of RC/09/2012 and other connected references, holding the workman entitled to be reinstated with 50% of back wages with respect to the workman who had completed 10 years of continuous engagement with the then State Bank of Indore as daily wager and their termination was found in violation of the Act.

In the case in hand, the tenure of the workman is very short. He has not been recruited against any sanctioned post following recruitment procedure. About 34 years have passed after his termination. In the light of these facts, a lump sum compensation in lieu of all his claims will meet the ends of justice in my considered view to which the workman is held entitled to. Keeping in view the fact and circumstances above mentioned, a lump sum compensation

of Rs. 2,00,000/- (Two Lacs Only) payable to the workman within 30 days from the date of notification, failing which interest @ of 8% from the date of Award, till payment. Issue No.-3 is answered accordingly.

On the basis of above discussion and findings, the reference is answered as follows :-

AWARD

Holding the action of management Railways, General Manager, Central Railways Mumbai in terminating the services of Jagannath Prasad S/o. Gokul Das w.e.f., 19.02.1990 unjustified in law, he is held entitled to a lump sum compensation of Rs. 2,00,000/- (Two Lacs Only) payable to him within 30 days from the date of notification, failing which interest @ of 8% from the date of Award, till payment. No order as to cost.

DATE:- 25/10/2024

P. K. SRIVASTAVA, Presiding Officer

नई दिल्ली, 12 फरवरी, 2025

का.आ. 198.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार LVW c&d vKID bffM; k के प्रबंधन, संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय जबलपुर के पंचाट (02/2018) प्रकाशित करती है।

[सं. एल – 12011/22/2017-आईआर (बी-1)]

सलोनी, उप निदेशक

New Delhi, the 12th February, 2025

S.O. 198.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 02/2018) of the *Cent.Govt.Indus.Tribunal-cum-Labour Court Jabalpur* as shown in the Annexure, in the industrial dispute between the management of State Bank of India their workmen.

[No. L-12011/22/2017-IR (B-I)]

SALONI, Dy. Director

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT,
JABALPUR

No. CGIT/LC/R/02/2018

Present: P.K. Srivastava

H.J.S..(Retd)

The General Secretary,

SBI Staff Congress (Bhopal Circle),

H.No. 5, Rohit Nagar, Phase-I,

E-8 Extention, Bawdiakalan,

Bhopal (M.P.)

Workman

Versus

The Chief General Manager,

State Bank of India,

Local Head Office, Hoshangabad Road,

Bhopal (M.P.)

Management

AWARD**(Passed on this 26th day of November-2024.)**

As per letter dated 15/01/2018 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this tribunal under section-10 of I.D. Act, 1947 as per reference number L-12011/22/2017 (IR(B-I)) dt. 15/01/2018. The dispute under reference related to :-

“ Whether the action of management of Chief General Manager, State Bank of India, LHO, Bhopal in not paying Basic Pay, DA, Incremental Pay & Medical facilities to Smt Vimla Devi PTS, w.e.f. Sept’ 2009 (for 40 months) is legal & or justified? If not, to what relief the workman concerned is entitled to? ”

After registering the case on reference received, notices were sent to the parties and were duly served on them. Parties appeared and filed their respective statement of claim and defence but did not produce any evidence before this Tribunal.

The Initial burden to prove his claim is on the workman. Since the workman did not file any pleading nor did he file any evidence, in the absence of any evidence in support of holding the claim of the workman not proved, the reference deserves to be answered against the workman and is answered accordingly.

AWARD

In the light of this factual backdrop, holding that the claim of the workman is not proved, the reference deserves to be answered against the Workman and is answered accordingly.

Let the copies of the award be sent to the Government of India, Ministry of Labour & Employment as per rules.

P. K. SRIVASTAVA, Presiding Officer

DATE: 26/11/2024

नई दिल्ली, 12 फरवरी, 2025

का.आ. 199.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार LVV c&d v/KID b&M; k के प्रबंधन, संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय जबलपुर के पंचाट (93/2013) प्रकाशित करती है।

[सं. एल – 12012/82/2013-आईआर (बी-1)]

सलोनी, उप निदेशक

New Delhi, the 12th February, 2025

S.O. 199.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 93/2013) of the *Cent.Govt.Indus.Tribunal-cum-Labour Court Jabalpur* as shown in the Annexure, in the industrial dispute between the management of State Bank of India their workmen.

[No. L-12012/82/2013-IR (B-I)]

SALONI, Dy. Director

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT,
JABALPUR**

NO. CGIT/LC/R/93/2013

Present: P.K. Srivastava

H.J.S..(Retd)

Smt. Budhlaxmi Pandita

W/o. Sri Vinod Pandit

7, Vasundhara Sadan,

In front of Tripathi Hospital,

New Shanti Nagar, Raipur (CG)

Workman

Versus**1. The Disciplinary Authority &****Assistant General Manager****State Bank of India****Disciplinary Proceedings Department****Administrative Office, Byron Bazar****Raipur (CG)****Management****2. The Appellate Authority &****Deputy General Manager****State Bank of India****Administrative Office, Byron Bazar****Raipur (CG)****3. The Enquiry Officer &****Chief Manager****State Bank of India****Agrasen Chowk Branch****Raipur (CG)****Management****(JUDGMENT)****(Passed on this 08th day of November - 2024)**

As per letter dated 04/10/2013 by the Government of India, Ministry of Labour, New Delhi, the reference is made to this tribunal under section-10 of I.D. Act, 1947 as per reference number L-12012/82/2013 (IR(B-I)) dt. 04/10/2013. The dispute under reference related to :-

1. *“Whether the departmental inquiry conducted by the Inquiry Officer is fair and proper and conforms to the principles of natural justice. To what relief the workman is entitled ?*
2. *Whether the penalty of dismissal from service awarded to Smt. Budhlaxmi Pandita, Clerk cum Cashier at Shanti Nagar, Raipur Branch of the State Bank of India by the management of State Bank of India, Byron Bazar, Raipur vide order dated 04.11.2010 is proper and justified ? To what relief the workman is entitled ?”*

After registering a case on the basis of reference, notices were issued to the parties. They appeared and filed their respective statements of claim and defense.

According to the workman a show cause notice dated 18.08.2009 was issued against him by management alleging certain misconducts regarding embezzlement and defrauding the Bank by fraudulent withdrawals in various accounts and also regarding alleged used of I.D. and password of Accountant Chetan Singh Thakur for making unauthorized transactions in various accounts. The other charges were indulging in habitual indebtedness and borrowing from private parties and institutions without approval of the management and also in transactions relating to amount which are disproportionate to his known source of income through his personal account. The workman submitted his reply dated 02.09.2009 denying the allegations and also submitted relevant documents along with the reply.

The management being not satisfied with the reply decided to conduct an inquiry and a charge sheet dated 05.12.2009 was served on the workman alleging five articles of misconduct mentioned in the charge sheet. The workman filed written reply to the charge sheet denying charges vide his representation dated 16.02.2009. Shri K.K. Pillai, Chief Manager was appointed Inquiry Officer and Shri Vijay Kawatkar, Deputy General Manager was appointed Presenting Officer. Shri Sharad Kumar Rathore was permitted to be engaged as defence Assistant as requested by the workman. According to the workman the inquiry was conducted between 21.01.2010 to 18.05.2010 but in total violation and disregard of principles of natural justice, fairness and service rules. Further after the inquiry the Inquiry Officer submitted his inquiry report dated 14.07.2010 to the Disciplinary Authority. The Disciplinary

Authority agreed with the finding of the Inquiry Officer without giving the workman an opportunity of hearing and issue notice only on the point of punishment which shows the prejudicial mindset of the Disciplinary Authority in acting on such faulty inquiry report.

The case of the management is mainly that the inquiry was conducted as per rules and procedure. The workman participated during the inquiry. He was permitted to engage defense assistant of his own choice. Full reasonable, effective and adequate opportunity was provided to the workman during the course of the inquiry.

The workman examined herself as a witness on this issue and reiterated her case mentioned above. She has been cross-examined by management. The workman has further filed show cause notice dated 18.08.2009. The charge sheet dated 30.11.2009 and 05.12.2009 photocopy of brief submitted by the Presenting Officer during the inquiry, show cause notice by the Disciplinary Authority on 22.09.2010 and covering letter regarding service of the show cause, punishment order dated 04.11.2010 and covering letter with it, order of Appellate Authority dismissing the appeal, all these documents were admitted by management and marked as Exhibits W/1 to W/7 respectively.

The management examined its witness Vikas Kumar Baranwal, Chief Manager who was later discharged uncross-examined. The management thereafter filed affidavit of its other witness Shri Vijay Kawatkar, the Presenting Officer, who has been cross-examined by the workman.

Following issues were framed on the basis of pleadings :-

1. *Whether, the departmental inquiry conducted is legal and fair ?*
2. *Whether, charges are proved ?*
3. *Whether, punishment is disproportionate to the charge ?*
4. *Whether, the workman is entitled to any relief ?*

Issue number one was decided as preliminary issue vide order dated 15.06.2022 holding the departmental inquiry legal and proper. This order is part of this award.

Thereafter, parties were given opportunity to lead evidence on remaining issues. They did not file any evidence.

At argument stage none appeared for the workman, hence argument of learned Counsel Shri Vijay Tripathi for management were heard and records have been perused by me. Management has filed written argument, which is part of record. I have gone through the written arguments.

Issue No.-2 :-

The charges against the workman were as follows:-

1. **That, she embezzled and defrauded the Bank by making unauthorized cash withdrawals on various customers account (total number 13) on several occasions mentioned in the charge-sheet.**
2. **That, she used the ID and password of Chetan Singh Thakur Accountant for posting/passing unauthorized transactions on 17.10.2008 as mentioned in the charge-sheet.**
3. **That, she made unauthorized withdrawals from accounts of customers and divert the credits to the accounts of other customers as well redirected the accounts after sometime and while redirecting, she either debited her own account or some other customers account, details mentioned in the charge-sheet.**
4. **That, she made frequent outside borrowings from private persons as well other institutions without permission from Bank.**
5. **That, her two personals account mentioned in the charge-sheet reveal transactions of approximately 24 lacs within the period 2006-08 which is disproportionate to known sources of her income.**

The Inquiry Officer has found charge no.-1 not proved, charge no.-2 partially proved and charge no.- 3, 4 & 5 totally proved. Regarding charge no.-2, the Inquiry Officer observed that though it was not clear, whether Shri C.S. Thakur provided his password for his comfort or the workman came to know somehow, but there was a debit entry of Rs. 10,000/- on 15.10.2008 in the account of Shri Basant Kumar, this amount has been made good by the workman by way of debiting the amount from her own account on 02.11.2008 through a debit slip signed by her as a depositor. Same has happened with respect to other transactions relating to this charge, hence this charge was held proved. Regarding charge no.-3 the amounts were refunded by the workman by way of debit from her account. Regarding charge no.-4, since there was no permission letter was filed by the workman permitting her to take loan from private players, this charge was held proved by the Inquiry Officer. Regarding charge no.-5, the Inquiry Officer was observed that the workman had taken a defense that she had sold her house and sale proceeds were deposited in her account, but it was found that about Rs. 6 lacs were deposited, huge amount even after 02.03.2007 and hence charges were held proved.

The settled law is that the standard of proof required to prove a charge during departmental enquiry and in criminal trial is different. In the former, charge is to be proved to the extent of preponderance whereas in the later, charge is to be proved beyond reasonable doubt.

Scope of disciplinary proceedings and scope of criminal proceedings are quite distinct, exclusive and independent of each other. Standards of proof in the two proceedings are also different. Ref. T.N.C.S. Corpn. Ltd. vs. K. Meerabai, (2006) 2 SCC 255

*Standard of proof in a departmental enquiry which is quasicriminal/quasi-judicial in nature: Disciplinary proceedings, however, being quasi-criminal in nature, **there should be some evidence to prove the charge.** Although the charges in a departmental proceedings are not required to be proved like a criminal trial i.e. beyond all reasonable doubts, we cannot lose sight of the fact that the enquiry officer performs a quasijudicial function, who upon analyzing the documents must arrive at a conclusion that there had been a preponderance of probability to prove the charges on the basis of materials on record. While doing so, he cannot take into consideration any irrelevant fact. He cannot refuse to consider the relevant facts. He cannot shift the burden of proof. He cannot reject the relevant testimony of the witnesses only on the basis of surmises and conjectures. Ref: (i) *Nirmala J. Jhala Vs. State of Gujarat & Another*, AIR 2013 SC 1513 (paras 10, 11, 12 & 13). (ii) *M.V. Bijlani Vs. Union of India*, (2006) 5 SCC 88 (Para 25)*

In the cases of (i) NOIDA Entrepreneurs Association Vs NOIDA & others, AIR 2007 SC 1161 (i4i) State Bank of India Vs. R.B. Sharma, (2004) 7 SCC 27 (iii) Kendriya Vidyalaya Sangathan Vs. T. Srinivas, (2004) 7 SCC 442 (iv) Depot Manager, APSRTC Vs. Mohd. Yousuf Miya, (1997) 2 SCC 699 (v) Captain M. Paul Anthony Vs. Bharat Gold Mines Limited (1999) 3 SCC 679 and (vi) State of Rajasthan Vs. B.K. Meena, (1996) 6 SCC 417 (vi) Pratap Singh Vs. State of Punjab, AIR 1964 SC 72 (vii) Jang Bahadur Singh Vs. Baij Nath, AIR 1969 SC 30, it has been laid down by the Hon'ble Supreme Court that "the purpose of departmental enquiry and of prosecution are two different and distinct aspects. Departmental Enquiry is to maintain discipline in the service and efficiency of public service. Crime is an act of commission in violation of law or of omission of public duty. The enquiry in a departmental proceeding relates to the conduct or breach of duty by the delinquent officer to punish him for his misconduct defined under the relevant statutory rules or law. It is the settled legal position that the strict standard of proof or applicability of the Evidence Act stands excluded in a departmental proceeding. Criminal Proceedings and the departmental proceeding under enquiry can go on simultaneously."

In the case of T.N.C.S. Corporation Ltd. Vs. K. Meerabai, (2006) 2 SCC 255, it has been held by the Hon'ble Supreme Court that the scopes of the disciplinary proceedings and of criminal proceedings are quite distinct, exclusive and independent of each other. Standards of proof in the two proceedings are also different.

In the cases of Mohd. Saleem Siddiqui Vs. State of UP & others, (2011) 2 UPLBEC 1575 (Allahabad High Court) and Ajeet Kumar Naag Vs. General Manager Indian Oil Corporation Ltd. Haldia, JT 2005 (8) SC 425, the distinction between departmental enquiry and criminal proceedings has been drawn as under: "The two proceedings i.e. criminal and departmental are entirely different. They operate in different fields and have different objectives. The object of criminal proceedings is to inflict appropriate punishment on offender and the purpose of enquiry proceedings is to deal with the delinquent departmentally and to impose penalty in accordance service rules the rule relating to appreciation of evidence in the two proceedings is also not similar. In criminal law burden of proof is on the prosecution and unless the prosecution is able to prove the guilt of accused beyond reasonable doubts, he cannot be convicted by a court of law. In departmental enquiry, on the other hand, penalty can be imposed on the delinquent officer on a finding recorded on the basis of preponderance of probability. Procedure with respect to standard of proof in criminal case and departmental enquiry are different. In the case of departmental enquiry the technical rules of evidence have no application and the doctrine of "proof beyond doubt" has also no application in the departmental enquiry. Criminal prosecution is launched for an offence for violation of a duty the offender owes to the society or for breach of which law has provided that the offender shall make satisfaction to the public. So crime is an act of commission in violation of law or of omission of public duty. The departmental enquiry is to maintain discipline in the service and efficiency of public service. There would be no bar to proceed simultaneously with departmental enquiry and trial of criminal case. "

In Judgment dated 20.05.2022 of the Supreme Court in Civil Appeal No. 3490/2022, State Bank of India Vs. K.S. Vishwanath. (ii) Maharashtra State Road Transport Corporation Vs. Dilip Uttam Jaya Bhay, 2022 LiveLaw (SC) 3 it has been held that acquittal in criminal trial has no bearing or relevance on disciplinary proceeding as the standard of proof in both the cases are different.

This extract is taken from SBI v. R. Periyasamy, (2015) 3 SCC 101 : (2015) 1 SCC (L&S) 613 : 2014 SCC OnLine SC 992 at page 108

11. It is interesting to note that the learned Single Judge went to the extent of observing that the concept of preponderance of probabilities is alien to domestic enquiries. On the contrary, it is well known that the standard of proof that must be employed in domestic enquiries is in fact that of the preponderance of probabilities. In Union of India v. Sardar Bahadur [(1972) 4 SCC 618 : (1972) 2 SCR 218], this Court held that a disciplinary proceeding is not a criminal trial and thus, the standard of proof required is that of preponderance of probabilities and not proof

beyond reasonable doubt. This view was upheld by this Court in *SBI v. Ramesh Dinkar Punde* [(2006) 7 SCC 212 : 2006 SCC (L&S) 1573]. More recently, in *SBI v. Narendra Kumar Pandey* [(2013) 2 SCC 740 : (2013) 1 SCC (L&S) 459], this Court observed that a disciplinary authority is expected to prove the charges levelled against a Bank officer on the preponderance of probabilities and not on proof beyond reasonable doubt.

12. Further, in *Union Bank of India v. Vishwa Mohan* [(1998) 4 SCC 310 : 1998 SCC (L&S) 1129], this Court was confronted with a case which was similar to the present one. The respondent therein was also a Bank employee, who was unable to demonstrate to the Court as to how prejudice had been caused to him due to non-supply of the inquiry authorities report/findings in his case. This Court held that in the Banking business absolute devotion, diligence, integrity and honesty needs to be preserved by every Bank employee and in particular the Bank officer. If this were not to be observed, the Court held that the confidence of the public/depositors would be impaired. Thus, in that case the Court set aside the order of the High Court and upheld the dismissal of the Bank employee, rejecting the ground that any prejudice had been caused to him on account of non-furnishing of the inquiry report/findings to him.

13. While dealing with the question as to whether a person with doubtful integrity ought to be allowed to work in a government department, this Court in *Commr. of Police v. Mehar Singh* [(2013) 7 SCC 685 : (2013) 3 SCC (Cri) 669 : (2013) 2 SCC (L&S) 910], held that while the standard of proof in a criminal case is proof beyond all reasonable doubt, the proof in a departmental proceeding is merely the preponderance of probabilities. The Court observed that quite often the criminal cases end in acquittal because witnesses turn hostile and therefore, such acquittals are not acquittals on merit. An acquittal based on benefit of doubt would not stand on a par with a clean acquittal on merit after a full-fledged trial, where there is no indication of the witnesses being won over. The long-standing view on this subject was settled by this Court in *R.P. Kapur v. Union of India* [AIR 1964 SC 787], whereby it was held that a departmental proceeding can proceed even though a person is acquitted when the acquittal is other than honourable. We are in agreement with this view.

In the light of the aforesaid proposition of law and evidence collected during inquiry, the findings of Inquiry Officer cannot be held to be perverse. Hence, holding the finding of the Enquiry Officer holding the charges proved perfectly legal, issue no.-2 is answered accordingly.

Issue No.-3 :-

The settled proposition of law is that Courts will not interfere in the punishment unless it is found to be shockingly disproportionate to the charges.

Hon'ble Apex Court in *B.C. Chayurvedi v. Union of India*, (1995) 6 SCC 749 while discussing about the scope of judicial review, in disciplinary matters, has observed as under:

“The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mold the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, imposed appropriate punishment with cogent reasons in support thereof.”

In *DG, RPF vs. Sai Babu* (2003) 4 SCC 331, Hon'ble Apex Court has observed that:

“6..... Normally, the punishment imposed by a disciplinary authority should not be disturbed by the High Court or a tribunal except in appropriate cases that too only after reaching a conclusion that the punishment imposed is grossly or shockingly disproportionate, after examining all the relevant factors including the nature of charges proved against, the past conduct, penalty imposed earlier, the nature of duties assigned having due regard to their sensitiveness, exactness expected of an discipline required to be maintained, and the department/establishment which the delinquent person concerned works.”

In *United Commercial Bank vs. P.C. Kakkar* (2003) 4 SCC 364 Hon'ble Apex Court on review of a long line of cases and the principles of judicial review of administrative action under English law summarized the legal position in the following words:

*“11. The common thread running through in all these decisions is that the court should not interfere with the administrators' decision unless it was illogical or suffers from procedural impropriety or was shocking to the conscience of the court, in the sense that it was in defiance of logic or moral standards. In view of what has been stated in *Wednesbury* case the court would not go into the correctness of the choice made by the administrator open to him and the court should not substitute its decision to that of the administrator. The scope of judicial review is judicial review is limited to the deficiency in decision-making process and not the decision.*

12. To put it differently, unless the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the court/tribunal, there is no scope for interference. Further, to

shorten litigation it may, in exceptional and rare cases, impose appropriate punishment by recording cogent reasons in support thereof."

In *Union of India vs. S.S. Ahluwalia* (2007) 7 SCC 257 Hon'ble Supreme Court reiterated the legal position as follows:

"8. The scope of judicial review in the matter of imposition of penalty as a result of disciplinary proceedings is very limited. The court can interfere with the punishment only if it finds the same to be shockingly disproportionate to the charges found to be proved."

In *State of Meghalaya v. Mecken Singh N. Marak* (2008) 7 SCC 580 Hon'ble Supreme Court stated that:

"The punishment imposed by the disciplinary authority or the appellate authority unless shocking to the conscience of the court, cannot be subjected to judicial review."

Hon'ble Apex Court in *Administrator, Union Territory of Dadra and Nagar Haveli vs. Gulbhia M. Lad* (2010) 2 SCC (L&S) 101 has observed that

"The legal position is fairly well settled that while exercising the power of judicial review, the High Court or a Tribunal cannot interfere with the discretion exercised by the disciplinary authority, and/or on appeal the appellate authority with regard to the imposition of punishment unless such discretion suffers from illegality or material procedural irregularity or that would shock the conscience of the court/tribunal. The exercise of discretion in imposition of punishment by the disciplinary authority or appellate authority is dependent on host of factors such as gravity of misconduct, past conduct, the nature of duties assigned to the delinquent, responsibility of the position that the delinquent holds, previous penalty, if any, and the discipline required to be maintained in the department or establishment he works. Ordinarily the court or the tribunal would not substitute its opinion on reappraisal of facts."

In the case of *State of T.N. vs. K. Guruswami*, (1996) 7 SCC 114 held that

2. This appeal is preferred against the judgment of the Tamil Nadu Administrative Tribunal. The respondent was a Sales Tax Officer. He was prosecuted for offences under Section 5(1)(d) read with Section 5(2) of the Prevention of Corruption Act, 1947 as well as Section 201 of the Penal Code, 1860. The trial court found him guilty under the said provisions and sentenced him to imprisonment by its order dated 7-9-1976. On 31-10-1978, a notice was issued to the respondent by the State asking him to show cause why he should not be dismissed on the basis of the conduct which led to his conviction aforesaid. The respondent was dismissed on 27-11-1978 with reference to Rule 17(c) of Tamil Nadu Civil Services Rules which is evidently referable to proviso (a) to Article 311(2) of the Constitution of India. Subsequently, on 10-12-1981, the High Court dismissed the appeal preferred by the respondent against his conviction and sentence. The special leave petition filed by him has also been dismissed. After all this was over, the respondent approached the High Court by way of a writ petition questioning the order of his dismissal which was transferred to the Tamil Nadu State Administrative Tribunal. The Tribunal has set aside the said dismissal order on the ground that no ample opportunity was given to the respondent to show cause against the action proposed. The Tribunal holds that though the respondent did not show cause pursuant to the show-cause notice, yet it was obligatory upon the authority to consider the appropriate punishment called for in the facts and circumstances of the case. In our opinion, the said principle can make no difference in the facts of this case. Here, the respondent has been convicted for corruption and there can be nothing short of dismissal in such cases. No other lesser punishment can be contemplated in such cases."

In another case *Rajasthan SRTC vs. Bajrang Lal* (2014) 4 SCC 693 para 21 & 22 are being reproduced as follows :-

21. As regards the question of disproportionate punishment is concerned, the issue is no more res integra. In U.P. SRTC v. Suresh Chand Sharma [(2010) 6 SCC 555 : (2010) 2 SCC (L&S) 239], it was held as under : (SCC p. 561, para 22)

"22. In Municipal Committee, Bahadurgarh v. Krishnan Behari [(1996) 2 SCC 714 : 1996 SCC (L&S) 539 : (1996) 33 ATC 238] this Court held as under : (SCC p. 715, para 4)

'4. ... In a case of such nature—indeed, in cases involving corruption—there cannot be any other punishment than dismissal. Any sympathy shown in such cases is totally uncalled for and opposed to public interest. The amount misappropriated may be small or large; it is the act of misappropriation that is relevant.'

Similar view has been reiterated by this Court in Ruston & Hornsby (I) Ltd. v. T.B. Kadam [(1976) 3 SCC 71 : 1976 SCC (L&S) 381], U.P. SRTC v. Basudeo Chaudhary [(1997) 11 SCC 370 : 1998 SCC (L&S) 155], Janatha Bazar (South Kanara Central Coop. Wholesale Stores Ltd.) v. Sahakari Noukarara

Sangha [(2000) 7 SCC 517 : 2000 SCC (L&S) 962] , Karnataka SRTC v. B.S. Hullikatti [(2001) 2 SCC 574 : 2001 SCC (L&S) 469] and Rajasthan SRTC v. Ghanshyam Sharma [(2002) 10 SCC 330 : 2003 SCC (L&S) 714].”

22. *In view of the above, the contention raised on behalf of the respondent employee, that the punishment of removal from service is disproportionate to the delinquency is not worth acceptance. The only punishment in case of the proved case of corruption is dismissal from service.*

This extract is taken from *State Bank of Bikaner & Jaipur v. Nemi Chand Nalwaya*, (2011) 4 SCC 584 : (2011) 1 SCC (L&S) 721 : 2011 SCC OnLine SC 416 at page 587

7. *It is now well settled that the courts will not act as an appellate court and reassess the evidence led in the domestic enquiry, nor interfere on the ground that another view is possible on the material on record. If the enquiry has been fairly and properly held and the findings are based on evidence, the question of adequacy of the evidence or the reliable nature of the evidence will not be grounds for interfering with the findings in departmental enquiries. Therefore, courts will not interfere with findings of fact recorded in departmental enquiries, except where such findings are based on no evidence or where they are clearly perverse. The test to find out perversity is to see whether a tribunal acting reasonably could have arrived at such conclusion or finding, on the material on record. The courts will however interfere with the findings in disciplinary matters, if principles of natural justice or statutory regulations have been violated or if the order is found to be arbitrary, capricious, mala fide or based on extraneous considerations. (Vide B.C. Chaturvedi v. Union of India [(1995) 6 SCC 749 : 1996 SCC (L&S) 80 : (1996) 32 ATC 44] , Union of India v. G. Ganayutham [(1997) 7 SCC 463 : 1997 SCC (L&S) 1806] , Bank of India v. Degala Suryanarayana [(1999) 5 SCC 762 : 1999 SCC (L&S) 1036] and High Court of Judicature at Bombay v. Shashikant S. Patil [(2000) 1 SCC 416 : 2000 SCC (L&S) 144].)*

8. *When a court is considering whether the punishment of “termination from service” imposed upon a Bank employee is shockingly excessive or disproportionate to the gravity of the proved misconduct, the loss of confidence in the employee will be an important and relevant factor. When an unknown person comes to the Bank and claims to be the account-holder of a long inoperative account, and a Bank employee, who does not know such person, instructs his colleague to transfer the account from “dormant” to “operative” category (contrary to the instructions regulating dormant accounts) without any kind of verification, and accepts the money withdrawal form from such person, gets a token and collects the amount on behalf of such person for the purpose of handing it over to such person, he in effect enables such unknown person to withdraw the amount contrary to the Banking procedures; and ultimately, if it transpires that the person who claimed to be the account-holder was an impostor, the Bank cannot be found fault with if it says that it has lost confidence in the employee concerned. A Bank is justified in contending that not only the employees who are dishonest, but those who are guilty of gross negligence, are not fit to continue in its service.*

This extract is taken from *U.P. SRTC v. Suresh Chand Sharma*, (2010) 6 SCC 555 : (2010) 2 SCC (L&S) 239 : 2010 SCC OnLine SC 648 at page 561

21. *We do not find any force in the submissions made by Dr. J.N. Dubey, learned Senior Counsel for the employee that for embezzlement of such a petty amount, punishment of dismissal could not be justified for the reason that it is not the amount embezzled by a delinquent employee but the mens rea to misappropriate the public money.*

22. *In Municipal Committee, Bahadurgarh v. Krishnan Behari [(1996) 2 SCC 714 : 1996 SCC (L&S) 539 : AIR 1996 SC 1249] this Court held as under : (SCC p. 715, para 4)*

“4. ... In a case of such nature—indeed, in cases involving corruption—there cannot be any other punishment than dismissal. Any sympathy shown in such cases is totally uncalled for and opposed to public interest. The amount misappropriated may be small or large; it is the act of misappropriation that is relevant.”

Similar view has been reiterated by this Court in Ruston & Hornsby (I) Ltd. v. T.B. Kadam [(1976) 3 SCC 71 : 1976 SCC (L&S) 381 : AIR 1975 SC 2025] , U.P. SRTC v. Basudeo Chaudhary [(1997) 11 SCC 370 : 1998 SCC (L&S) 155] , Janatha Bazar (South Kanara Central Coop. Wholesale Stores Ltd.) v. Sahakari Noukarara Sangha [(2000) 7 SCC 517 : 2000 SCC (L&S) 962] , Karnataka SRTC v. B.S. Hullikatti [(2001) 2 SCC 574 : 2001 SCC (L&S) 469 : AIR 2001 SC 930] and Rajasthan SRTC v. Ghanshyam Sharma [(2002) 10 SCC 330 : 2003 SCC (L&S) 714].

23. *In NEKRTC v. H. Amaresh [(2006) 6 SCC 187 : 2006 SCC (L&S) 1290 : AIR 2006 SC 2730] and U.P. SRTC v. Vinod Kumar [(2008) 1 SCC 115 : (2008) 1 SCC (L&S) 1] this Court held that the punishment should always be proportionate to the gravity of the misconduct. However, in a case of corruption/misappropriation, the only punishment is dismissal.*

24. *Thus, in view of the above, the contention raised on behalf of the employee that punishment of dismissal from service was disproportionate to the proved delinquency of the employee, is not worth acceptance.*

This extract is taken from SBI v. Ajai Kumar Srivastava, (2021) 2 SCC 612 : (2021) 1 SCC (L&S) 457 : 2021 SCC OnLine SC 4 at page 631

42. Before we conclude, we need to emphasise that in Banking business absolute devotion, integrity and honesty is a sine qua non for every Bank employee. It requires the employee to maintain good conduct and discipline and he deals with money of the depositors and the customers and if it is not observed, the confidence of the public/depositors would be impaired. It is for this additional reason, we are of the opinion that the High Court has committed an apparent error in setting aside the order of dismissal of the respondent dated 24-7-1999 confirmed in departmental appeal by order dated 15-11-1999.

In the instant case the workman, committed gross misconduct; whereby she misappropriated huge amount which has been found proved after enquiry. This charge involves lack of integrity and devotion for duty which is the core of any service punishment for which is major punishment including dismissal from service also. This is definitely an act prejudicial to the interest of the Bank, which leads to loss of faith in the workman. No employer can afford to have an employee in whom it has lost confidence. Thus, the Bank being a financial institution dealing with the public money, the employees of the Bank are required to exhibit utmost honesty and integrity in day to day transaction/functioning. The act of dishonesty or fraud or misappropriation lowers down the reputation of Bank in public. The public lose their confidence in Bank, which affects Bank's business and finally the national economy.

In *Air India Corporation Bombay vs. V.A. Ravellow 1972 (25) FLR 319 (SC)* it has been observed that:

"Once the employer has lost the confidence in the employee and the bona fide loss of confidence is affirmed, the order of punishment must be considered to be immune from challenge, for the reason that discharging the office of trust and confidence requires absolute integrity, and in a case of loss of confidence, reinstatement cannot be directed."

In *Knhaiyalal Agarwal and others vs. Factory Manager, Gwalior Sugar Co. Ltd. AIR 2001 SC 3645* Hon'ble Apex Court laid down the test for loss of confidence to find out as to whether there was bona fide loss of confidence in the employee, observing that:

"(i) the workman is holding the position of trust and confidence; (ii) by abusing such position, he commits act which results in forfeiting the same; and (iii) to continue him in service/establishment would be embarrassing the inconvenient to the employee, or would be detrimental to the discipline or security of the establishment. Loss of confidence cannot be subjective, based upon the mind of the management. Objective facts which would lead to a definite inference of apprehension in the mind of the management, regarding trust worthiness or reliability of the employee, must be alleged and proved."

In *State Bank of India and another v. Bela Bagchi and others AIR 2005 SC 3272*, repelled the contention that even if by the misconduct of the employee the employer does not suffer any financial loss, he can be removed from service in a case of loss of confidence.

Hon'ble The Apex Court in (2011) 1 Supreme Court Cases (L&S) 721 has observed that:

"7. It is now well settled that the courts will not act as an appellate court and reassess the evidence led in the domestic enquiry, nor interfere on the ground that another view is possible on the material on record. If the inquiry has been fairly and properly held and the findings are based on evidence, the question of adequacy of the evidence or the reliable nature of the evidence will not be grounds for interfering with the findings in departmental enquiries. Therefore, the courts will not interfere with findings of fact recorded in departmental inquiries, except where such findings are based on no evidence or where they are clearly perverse. The test to find out perversity is to see whether a tribunal acting reasonably could have arrived at such conclusion or findings, on the material on record. The courts will however interfere with the findings in disciplinary matters, if principles of natural justice or statutory regulations have been violated or if the order is found to be arbitrary, capricious, mala fide or based on extraneous considerations."

On the basis of above discussion the punishment is held not disproportionate to the charge and issue no.-3 is answered accordingly.

Issue No.-4 :-

In the light of findings recorded, the workman is held entitled to no relief.

No other point was argued.

Accordingly, the petition is held sans merit and is liable to be dismissed.

AWARD

Holding the action of management of State Bank of India in awarding penalty of dismissal to the workman Smt. Budhlaxmi Pandita, Clerk cum Cashier at Shanti Nagar, Raipur Branch of the Bank vide order dated 04.11.2010 proper and justified, the workman has entitled to no relief. No order as to cost.

DATE:- 08/11/2024

P. K. SRIVASTAVA, Presiding Officer

नई दिल्ली, 12 फरवरी, 2025

का.आ. 200.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मेसर्स प्राइमवन वर्कफोर्स प्राइवेट लिमिटेड, एम.पी. नगर, भोपाल (मध्य प्रदेश); मेसर्स काप्रो मैनेजमेंट सॉल्यूशंस प्राइवेट लिमिटेड, इंदौर (मध्य प्रदेश); रजिस्ट्रार, भारतीय प्रौद्योगिकी संस्थान, इंदौर (मध्य प्रदेश), प्रबंधन के संबद्ध नियोजकों और श्री जितेन्द्र पटेल, कामगार, के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण-सह-श्रम न्यायालय, जबलपुर पंचाट (संदर्भ संख्या आईडी नंबर सीजीआईटी/एलसी/आर/23/2020, को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 12.02.2025 को प्राप्त हुआ था।

[सं. एल – 42025/07/2025-38-आईआर (डीयू)]

दिलीप कुमार, अवर सचिव

New Delhi, the 12th February, 2025

S.O. 200.— In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (**Ref. No. ID.No. CGIT/LC/R/23/2020**), of the **Central Government Industrial Tribunal cum Labour Court, Jabalpur** as shown in the Annexure, in the Industrial dispute between the employers in relation to **M/s Prime One Workforce Pvt. Ltd., M.P. Nagar, Bhopal (Madhya Pradesh); M/s Kaapro Management Solutions Pvt. Ltd., Indore (Madhya Pradesh); The Registrar, Indian Institute of Technology, Indore (Madhya Pradesh), and Shri Shri Jitendra Patel, Worker**, which was received along with soft copy of the award by the Central Government on 12.02.2025,

[No. L-42025-07-2025-38-IR (DU)]

DILIP KUMAR, Under Secy.

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT,
JABALPUR**

NO. CGIT/LC/R/23/2020

Present: P.K.Srivastava

H.J.S..(Retd)

Shri Jitendra Patel,

58 A, Mayur Nagar, Musakhedi,

Indore (Madhya Pradesh)

Workman

Versus

M/s PrimeOne Workforce Pvt. Ltd.

R-47, Zone-II, M.P. Nagar,

Bhopal (Madhya Pradesh) – 462011

M/s Kaapro Management Solutions Pvt. Ltd.,

201, Royal Diamond, Y.N. Road,

Indore (Madhya Pradesh) – 452003

The Registrar,

Indian Institute of Technology,

DAVV Campus, Khandwa Road,

Indore (Madhya Pradesh) – 452017

Management

AWARD**(Passed on this 16th day of January-2025.)**

As per letter dated **07/02/2020** by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this tribunal under section-10 of I.D. Act, 1947 as per reference number **J-1(1-1)/2020-IR** dt. **07/02/2020**. The dispute under reference related to :-

“Whether the action of the management of M/s.PrimeOne Workforce Pvt. Ltd. And M/s Kaapro Management Solutions Pvt. Ltd. In terminating the services of workman Shri Jitendra Patel working in the establishment of Registrar, Indian Institute of Technology, Indore (M.P.) wer. 16.02.2018 and 11.02.2016 respectively, are just & proper? If yes, what relief the workman concerned is entitled to and from which date ?”

After registering the case on reference received, notices were sent to the parties and were duly served on them. Time was allotted to the workman to submit his statement of claim. In spite of the allotment of time and service of notice, the workman never turned up and submitted his statement of claim. Management also did not file its written statement of claim/ defence. No evidence was ever produced by any of the parties in this Tribunal.

The Initial burden to prove his claim is on the workman. Since the workman did not file any pleading nor did he file any evidence, in the absence of any evidence in support of holding the claim of the workman not proved, the reference deserves to be answered against the workman and is answered accordingly.

AWARD

In the light of this factual backdrop, holding that the claim of the workman is not proved, the reference deserves to be answered against the Workman and is answered accordingly.

Let the copies of the award be sent to the Government of India, Ministry of Labour & Employment as per rules.

P. K. SRIVASTAVA, Presiding Officer

DATE: 16/01/2025